Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1995

BANK MELLI IRAN; BANK MELLAT,

Petitioners,

vs.

SHAMS PAHLAVI, aka H.I.H. PRINCESS SHAMS PAHLAVI,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Algerian Accords (an executive agreement of the United States which obligates United States Courts to enforce Iranian judgments) permit United States Courts to evaluate the proceedings underlying Iranian judgments, and to deny enforcement of such judgments, for perceived failure to comply with United States notions of due process.

2. If the Algerian Accords permit evaluation of Iranian judgments under United States notions of due process, whether the Courts below, in denying enforcement of Iranian judgments, misapplied due process and summary judgment standards.

PARTIES TO THE PROCEEDING

The Petitioners are Bank Melli Iran and Bank Mellat. The Petitioners are both nationalized banks, wholly-owned by the Islamic Republic of Iran. Pursuant to Supreme Court Rule 29.1, there is no other parent or subsidiary to be listed.

The Respondent is Shams Pahlavi, aka H.I.H. Princess Shams Pahlavi. The Petitioner knows of no parent or subsidiary to be listed.

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Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Bank Melli Iran and Bank Mellat ("Banks") respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reported at 58 F.3d 1406 (9th Cir. 1995) and are

are not reported. The opinions of the trial court are reproduced herein as Appendices B, C, D, E, and F.

STATEMENT OF JURISDICTION

The Court of Appeals rendered its judgment on June 29, 1995 (App. A, 1a). The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

EXECUTIVE AGREEMENT, CONSTITUTIONAL, EXECUTIVE ORDER AND STATUTORY PROVISIONS INVOLVED

(1) The Declarations of the Government of the Democratic and Popular Republic of Algeria and the Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran ("The Algerian Accords"), Point IV, paragraphs 12 and 14, (App. G);

(2) United States Constitution, Article VI (App. I);

(3) Executive Order No. 12284, Sections 1-101 and 1-104 (App. H).

STATEMENT OF THE CASE

A. Parties

Respondent Shams Pahlavi, aka H.I.H. Princess Shams Pahlavi ("Shams") is the sister of Mohammed Reza Pahlavi, the former Shah of Iran. As the Shah's sister, Shams is a member of the Pahlavi Dynasty. The petitioning Banks are nationalized and wholly-owned entities of the Government of the Islamic Republic of Iran, which succeeded the government of Mohammed Reza Pahlavi.

B. Algerian Accords

In 1981 the United States Government signed the Declarations of the Government of the Democratic and Popular Republic of Algeria and the Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran. These documents have come to be known as "the Algerian Accords". The Algerian Accords entitle the Islamic Republic of Iran and its instrumentalities and agencies, including the Banks, to enforce judgments and decrees relating to the Shah's and his close relatives' assets in United States Courts. (App. G).

Point IV of the Algerian Accords at Paragraph 14 provides:

> Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will make known, to all appropriate U.S. courts, that in any litigation of the kind described in Paragraph 12 above the claims of Iran should not be considered legally barred either by sovereign immunity principles or by the act of state doctrine in that *Iranian decrees* and judgments *relating to such assets should be enforced by such courts in accordance with United States law.* (Emphasis added.)

(App. G).

President Jimmy Carter signed Executive Order No. 12284 adopting the Algerian Accords language on enforcement of decrees and judgments. (App. H).

C. The Judgments

While living in Iran, Shams took out several monetary loans from the Banks. Shams signed promissory notes relating to each of the loans. Subsequently, Shams left Iran. Shams has failed to pay back the money she owes to the Banks.

The Banks sued Shams in Iranian Courts to enforce the promissory notes. The Banks could not personally serve Shams with notice of their lawsuits. As a result, Shams was served by publication consistent with Iranian and United States law. In each suit, Iranian Courts evaluated the merits of the Banks' claims under promissory notes. Court-appointed "Experts" filled a role akin to special masters under United States law to evaluate the Banks' claims.

Shams made no effort to defend herself in Iranian Courts either in person or through her representative which is permissible under Iranian procedural law. The Iranian Courts rendered judgments in the Banks' favor.[1]

D. Complaint and Motion to Dismiss

The Banks brought suit in the United States District Court for the Central District of California to enforce the Iranian judgments against Shams pursuant to the Algerian Accords and the Uniform Foreign Money Judgments Recognition Act, codified in California as Code of Civil Procedure Sections 1713-1713.8.

---

1. This lawsuit to enforce the Iranian judgments was instituted pursuant to an earlier California Superior Court judgment in *Islamic Republic of Iran, Bank Mellat v. Shams Pahlavi,* (1984) which held that the Iranian Courts provide an appropriate forum for such action to be brought against Shams. Accordingly, United States Courts are bound to enforce judgments rendered by the Iranian Courts in such action.

Shams filed a Motion to Dismiss the Banks' Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). The Motion to Dismiss urged that the Banks failed to state a claim on which relief could be granted based on fair trial, jurisdictional, and statute of limitations issues. The Motion to Dismiss appended reports from the United States Department of State which made generalized statements which include references to the judicial system in the Islamic Republic of Iran.

The Banks submitted no extrinsic evidence in opposition to the Motion to Dismiss. However, as the March 29, 1993 hearing on Shams' Motion closed, the trial court announced that it would treat Shams' Motion to Dismiss as a summary judgment motion under Federal Rule of Civil Procedure Rule 56. The trial court's decision was based on its mistaken conclusion that each side had submitted extrinsic evidence. (App. E).

In the March 29, 1993 hearing, the trial court rejected Shams' argument that the Iranian Courts lacked jurisdiction over Shams to render judgments. The trial court stated no conclusions on Shams' argument that the Banks' Complaint was untimely under the applicable statute of limitations. (App. E).

The trial court focused on Shams' argument that under United States notions of due process, Shams could not receive a fair trial in the Islamic Republic of Iran. The trial court refused to speculate or to take judicial notice of the fairness of Iranian Courts. (App. E).

The Banks objected to the fair trial inquiry. (App. E, F). The Banks maintained that the United States law requirement of due process should be applied in a way to carry out, rather than hinder, the implementation of Algerian Accords provisions in Point IV on the return of the Shah's and his close relatives' assets. Moreover, the Banks maintained that Iranian Courts adjudicated

Shams' cases through processes consistent with United States fair trial standards.

The trial court submitted the fair trial issue to the United States Department of State for comment. The Department of State responded to the trial court's inquiry merely by sending the trial court additional generalized reports as well as a Declaration from the former Director of the State Department's Office of Northern Gulf Affairs on the Islamic Republic of Iran.

The trial court directed the Banks to address the fair trial question. The trial court told the Banks that the Banks had the burden to prove that Shams could receive a fair trial in the Islamic Republic of Iran. The Banks complied with the trial court's directive.

The Banks supplied the trial court with an information and belief declaration which attached numerous exhibits on Iranian law, procedure, and legal proceedings in Iran.

On January 4, 1994, the trial court conducted a second formal hearing on Shams' Motion which it had elected to convert to a Motion for Summary Judgment. The trial court rejected the Banks' submission, stating that the Banks made a conscious failure to respond to the trial court's inquiry. The trial court surprisingly stated it would follow its firm (but unstated) tentative decision from the March 29, 1993 hearing that Shams could not receive a fair trial in Iranian Courts. (App. F).

The trial court failed to rule even that the Banks' submission created a material issue of fact which prevented judgment. The trial court dismissed the Banks' Complaint. (App. B, C, D & F).

E. Appeal

The Banks' appealed the dismissal of their Complaint to the United States Court of Appeals for the Ninth Circuit. The Banks and Shams briefed the issues on appeal. The Banks argued that the Algerian Accords do not permit examination of the fair trial issue in a way to hinder the implementation of the United States' obligation for the return of the assets and, assuming *arguendo* the issue could be raised, Shams could have received a fair trial. The Banks also argued that Shams' jurisdictional and time limitation arguments lack merit.

The Court of Appeals held a hearing on June 6, 1995 and subsequently issued a written decision. (App. A). The Court of Appeals rejected the Banks' arguments that the Algerian Accords barred examination of the Iranian judgments under United States due process standards. The Court of Appeals agreed with the trial court that the Banks had the burden to persuade the trial court on the fair trial issue and that the Banks' submission failed to meet the burden. The Court of Appeals held that Shams could not have received a fair trial in Iranian Courts.

The Court of Appeals affirmed the trial court's dismissal of the Banks' Complaint.

REASONS FOR GRANTING THE WRIT

I.

REVIEW IS NECESSARY TO CLARIFY THE RULE OF FEDERAL LAW ON EXECUTIVE AGREEMENTS.

This case provides this Court the opportunity to clarify for lower courts the effect of federal executive agreements over actions to enforce foreign judgments. In addressing these

important issues, this Court has the opportunity to correct the erroneous decisions by the lower courts by implementing the Algerian Accords and related Executive Order of former President Jimmy Carter.

A. The Algerian Accords' Enforcement Command Is Incompatible with a Due Process Challenge.

Shams contended, and the lower courts ruled, that the Banks must establish that Shams could receive a fair trial in Iranian Courts. Moreover, the lower courts ruled that United States due process standards would govern the fair trial issue. The courts ruled that the due process analysis must be satisfied for United States Courts to enforce the Iranian judgments against Shams.

The Banks dispute this. To determine whether United States notions of due process may be used to evaluate the Banks' judgments, the Court must interpret the clear terms of the Algerian Accords.

The Algerian Accords are an executive agreement entered into by the United States Government. Treaties and executive agreements constitute United States law. U.S. Const. Art. VI. (App. I). The Algerian Accords specifically provide in Paragraph 14 for enforcement of Iranian decrees and judgments relating to the Shah's and his close relatives' assets. The same paragraph states that United States Courts should enforce such decrees "in accordance with United States law." (App. G). The scope of the application of "United States law" should be determined with reference to the object and purpose of the Algerian Accords' Point IV provisions which provisions for the return of assets to Iran.

Paragraph 14 of the Algerian Accords should not mislead United States Courts to think that United States law applies in full

force and effect to actions seeking enforcement of Iranian judgments. Such a contention negates Paragraph 14's enforcement command. Absent the Algerian Accords, the Government of the Islamic Republic of Iran and its instrumentalities and agencies, like the Banks, could pursue enforcement of Iranian judgments in the United States under the rule of comity in *Hilton v. Guyot*, 159 U.S. 113 (1895). However, Paragraph 14 requires that Iranian judgments receive special treatment as compared to the ordinary rule of United States law, i.e. comity. The decisions below negate the clear import of Paragraph 14.

The terms of the Algerian Accords require enforcement of Iranian judgments in United States Courts to fulfill the United States' pledge of returning to Iran the Iranian nation's assets improperly taken by the Shah and his close relatives. A due process challenge is no more than an unintended device to derail an enforcement action and, thus, flout the intent of the Algerian Accords.

The command for enforcement set forth in Paragraph 14, "in accordance with United States law," obligates United States Courts to enforce the Banks judgments. The United States undertook the duty to return assets to the Islamic Republic of Iran. The Banks, as instrumentalities and agencies of the Islamic Republic of Iran[2], are entitled to enforcement of their Iranian judgments.

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2. Courts have recognized that the Banks are nationalized entities of the Islamic Republic of Iran. *See, e.g., New England Merchants National Bank v. Iran Power, etc.*, 646 F.2d 779, 780, 791 (2d Cir. 1981) [as to each of the Banks]; *Itek Corporation v. First National Bank of Boston*, 511 F. Supp. 1341, 1342 (D.Mass. 1981), *vacated on other grounds*, 704 F.2d 1, 3 (1st Cir. 1983), *on remand*, 566 F. Supp. 1210 (D. Mass 1983), *affirming decision on remand*, 930 F.2d 19, 20 (1st Cir. 1984) [as to Bank Melli Iran]; and *Continental Illinois Corp. v. Commissioner*, 94 T.C. 165, 172-173 (1990) [as to Bank Mellat].

Like treaties, executive agreements must be interpreted based only upon the clear meaning of their terms, unless an ambiguity exists. *Sumitomo Shoji America, Inc. v. Avagliano*, 457 U.S. 176, 180 (1982). The Algerian Accords do not contemplate due process inquiries.[3]

United States notions of due process should be applied in a manner to carry out, rather than hinder, the object and purpose of the provisions in Point IV of the Algerian Accords. The Algerian Accords are United States law and policy. Shams' due process challenge violates the Algerian Accords' direct mandate to United States Courts. The Algerian Accords require immediate and full enforcement of the Banks' judgments. Therefore, dismissal on due process grounds is an error which this Court should correct.

B. The Banks Established a Genuine Issue of Material Fact on the Due Process Issue to Preclude Summary Judgment.

At the trial court's directive, and to oppose Shams' Motion to Dismiss the Banks' Complaint, the Banks presented lengthy declarations on the issue of whether Shams would have received a fair trial under United States notions of due process. The declarations were submitted based on information and belief. The courts below mistakenly ruled that the declarations were not evidence which warranted consideration.

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3. The Algerian Accords establish the Iran-U.S. Claims Tribunal to address issues under the Algerian Accords between IRAN and the United States Government, among others. For the Court's reference, IRAN has a claim pending with the Claims Tribunal complaining that the United States has not fulfilled its enforcement obligations under the Algerian Accords. The Iran-U.S. Claims Tribunal will monitor the instant proceedings, as the United States Government faces potential liability in the Claims Tribunal proceeding. Iran maintains in this forum and the Claims Tribunal that the lower courts' actions in this case are inconsistent with the Algerian Accords.

The courts below addressed the fair trial question as an issue for summary judgment. Under federal standards set forth in Federal Rule of Civil Procedure 56, summary judgment is inappropriate where there are genuine issues of material fact which preclude judgment as a matter of law. *Anderson v. Liberty Lobby,* 477 U.S. 242 (1986). Whether or not the Banks' declarations are evidence in the traditional sense, that classification is irrelevant. The declarations create a genuine issue of material fact which preclude summary judgment under the *Anderson* standard. As this Court has previously stated:

> We do not mean that the nonmoving party must produce evidence in a form that would be admissible at trial in order to avoid summary judgment.

Celotex Corp. v. Catrett, 477 U.S. 321, 324 (1986).

The declarations set forth Iranian law and the meticulous, unbiased course of proceedings in Iranian Courts. The declarations present the requirements of a fair trial. Shams countered the declarations with mere generalized government reports. The government reports say nothing about Shams or proceedings involving her.

Courts may not weigh evidence in considering a motion for summary judgment. Summary judgment is appropriate only where the truth is clear. *Sartor v. Arkansas Gas Corp.,* 321 U.S. 620, 627 (1944). Here, the truth is not clear. The Banks' specific presentation conflicts with the sweeping generalized prejudicial statements of Shams' government reports.

The lower courts' rulings in favor of Shams result from the sort of weighing of conflicting details on due process which is forbidden on summary judgment.

There is a genuine issue of material fact on the fair trial issue. Summary judgment against the Banks for alleged due process infirmities was inappropriate.

CONCLUSION

The Petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: September 27, 1995

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT FILED JUNE 29, 1995

FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

NO. 94-55292

D.C. NO. CV-92-05479-JSL

BANK MELLI IRAN; BANK MELLAT,

Plaintiffs-Appellants,

v.

SHAMS PAHLAVI, aka H.I.H. Princess Shams Pahlavi,

Defendant-Appellee.

Appeal from the United States District Court
for the Central District of California
J. Spencer Letts, District Judge, Presiding

Argued and Submitted
June 6, 1995 — Pasadena, California

Filed June 29, 1995

Appendix A

OPINION

Before: Betty Binns Fletcher, Charles E. Wiggins, and Ferdinand F. Fernandez, Circuit Judges.

Opinion by Judge Fernandez

SUMMARY

International Law/Treaties/Litigation and Procedure (Civil)

The court of appeals affirmed a summary judgment. The court held that default money judgments obtained by two banks in Iran could not be enforced in the United States because the appellee, the former Shah of Iran's sister, could not expect to obtain due process of law in Iranian courts.

Appellants Bank Melli Iran and Bank Mellat, two Iranian banks, obtained default judgments in Iranian tribunals against appellee Shams Pahlavi, the former Shah of Iran's sister. The banks' collection actions were based on promissory notes signed by the sister (Pahlavi) prior to her flight from Iran. The banks had served Pahlavi by publication. They filed an action in the U.S. district court to enforce the Iranian judgments.

The district court granted Pahlavi's motion for summary judgment based on its finding that at the times the judgments were obtained Pahlavi could not have obtained due process of law in the courts of Iran. The banks appealed.

[1] The district court was neither improper or unfair in assigning the banks the burden of persuasion. Because Pahlavi's position was so persuasive, the banks were going to have to point to something to refute it.

Appendix A

[2] A foreign judgment cannot be enforced if it was obtained in a manner that did not accord with the basics of due process. [3] The Algerian Accords, a treaty between the United States and Iran that governs, *inter alia*, claims against the Shah's family, do not exempt attempts to enforce judgments from due process defenses.

[4] The information and belief declarations from counsel presented by the banks were entitled to no weight because the declarant did not have personal knowledge. [5] Moreover, they did not directly come to grips with the question placed at issue: whether Pahlavi could receive a fair trial. [6] In short, the banks failed to show that there was a material issue of fact on the question of whether Pahlavi could receive a fair trial in Iran. Thus, summary judgment was properly entered in Pahlavi's favor.

[7] The evidence presented by Pahlavi indicated that she could not expect fair treatment from the courts of Iran, could not personally appear before those courts, could not obtain proper legal representation in Iran, and could not even obtain local witnesses on her behalf. Those are not mere niceties of American jurisprudence; they are ingredients of basic due process.

COUNSEL

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Appendix A

OPINION

FERNANDEZ, Circuit Judge:

Bank Melli Iran and Bank Mellat (the Banks) filed this action for the purpose of enforcing certain judgments, which they had obtained against Shams Pahlavi in the tribunals of Iran. She is a resident of California and is the sister of the former Shah of Iran. The district court determined that at the times that the judgments were obtained Pahlavi could not have obtained due process of law in the courts of Iran. It, therefore, granted summary judgment in her favor. The Banks appeal and we affirm.

BACKGROUND

In January of 1979, the Shah of Iran fled the country in the midst of the series of events that ultimately resulted in the creation of the Islamic Republic of Iran. Prior to that time, Pahlavi, the Shah's older sister, had signed a number of promissory notes.

The Banks, which were the holders of those notes and which are at the very least closely associated with the government, brought collection actions against Pahlavi in the courts of Iran. They served her by publication and in 1982 and 1986 obtained default judgments in the total amount of $32,000,000. They now seek to enforce those judgments pursuant to the Algerian Accords[1] and pursuant to the California Uniform Foreign Money-Judgments Recognition Act. Cal. Civ. Proc. Code §§ 1713-1713.8 ("Foreign Money-Judgments Act" or the "Act").

---

1. *See* our discussion of the background and implementation of the Accords in *Islamic Rep. of Iran v. Boeing Co.*, 771 F.2d 1279, 1282-84 (9th Cir. 1985), *cert. dismissed*, 479 U.S. 957, 107 S. Ct. 450, 93 L. Ed. 2d 397 (1986).

Appendix A

Pahlavi filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) to which she attached a number of documents containing extrinsic evidence to support her assertion that the judgments were rendered without due process of law. At a hearing on March 29, 1993, the district court recognized that this was a speaking motion and converted it to a motion for summary judgment. It then gave the parties a number of months to submit further evidence and on January 4, 1994 held the final hearing at which it granted summary judgment for Pahlavi. It is from that judgment that the Banks have now appealed.

JURISDICTION AND STANDARD OF REVIEW

The district court had jurisdiction pursuant to 28 U.S.C. § 1331. We have jurisdiction pursuant to 28 U.S.C. § 1291.

We review the district court's interpretation of treaties and related executive orders *de novo. See United States v. Washington,* 969 F.2d 752, 754-55 (9th Cir. 1992), *cert. denied,* __ U.S. __, 113 S. Ct. 1945, 123 L. Ed. 2d 651 (1993). Executive agreements, like the Algerian Accords, are interpreted in the same manner as treaties and reviewed by the same standard. *See Air Canada v. United States Dep't of Transp.,* 843 F.2d 1483, 1486 (D.C. Cir. 1988); *see also Boeing Co.,* 771 F.2d at 1283-84.

We review grants of summary judgment *de novo. See Grove v. Mead Sch. Dist. No. 354,* 753 F.2d 1528, 1533 (9th Cir.), *cert. denied,* 474 U.S. 826, 106 S. Ct. 85, 88 L. Ed. 2d 70 (1985).

DISCUSSION

A. *Summary Judgment Issues.*

Once the district court decided to convert Pahlavi's motion

from a motion to dismiss to a motion for summary judgment, it was required to give the parties a "reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Fed. R. Civ. P. 12(b). In so doing, a district court need only apprise the parties that it will look beyond the pleadings to extrinsic evidence and give them an opportunity to supplement the record. *See Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994); *Grove*, 753 F.2d at 1532-33. The Banks complain that they did not have sufficient notice about the issues that the district court intended to consider. However, our review of the record makes it very clear that the Banks at the very least knew that the district court questioned whether due process was available to Pahlavi in the tribunals of Iran during the period from 1982 through 1986, that from what it had seen it doubted that due process was available, and that the parties should submit further information on that subject to it. There can be no doubt that the Banks knew that. Because that is the issue that the district court resolved in granting summary judgment, the Banks were neither misled nor subject to an erroneous decision in that respect.

The Banks also complain that they were improperly assigned the burden of persuasion. We agree that in reviewing a request for summary judgment it can be important to decide where the burden of persuasion lies. Here the Banks sought to enforce the judgment of the Iranian courts, and they had the burden of persuading the district court that they had judgments. *See, e.g., Hopkins v. Dow Corning Corp.*, 33 F.3d 1116, 1121 (9th Cir. 1994), *cert. denied*, __ U.S. __, 115 S. Ct. 734, 130 L. Ed. 2d 637 (1995). However, this case largely turns on the issue of whether the judgments were obtained in a manner that comported with due process. The question, then, is whether the Banks must demonstrate that the judgments were so obtained or whether Pahlavi must demonstrate that they were not or could not have been.

Appendix A

In *Hilton v. Guyot*, 159 U.S. 113, 205-06, 16 S. Ct. 139, 159, 40 L. Ed. 95 (1895), the leading common law foreign money judgment case, the Supreme Court indicated that:

> When an action is brought in a court of this country, by a citizen of a foreign country against one of our own citizens, to recover a sum of money adjudged by a court of that country to be due from the defendant to the plaintiff, and the foreign judgment appears to have been rendered by a competent court, having jurisdiction of the cause and of the parties, and upon due allegations and proofs, and opportunity to defend against them, and its proceedings are according to the course of a civilized jurisprudence, and are stated in a clear and formal record, the judgment is prima facie evidence, at least, of the truth of the matter adjudged . . . .

That could be seen as a suggestion that the due process issue is part of the case which must be established by a plaintiff. However, the Court was not actually discussing burdens of persuasion, and a strong argument can be made that a claimed lack of due process should be treated as a defense. So doing would be consistent with the view of a leading commentary that " '[t]here is much sense in making the party who claims the unusual occurrence plead it affirmatively so that the usual assumptions may be indulged in as a matter of course wherever there is no such claim.' " 5 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1271, at 445 (1990) (citation omitted).

Appendix A

A number of courts have so treated it. *See Banque Libanaise Pour le Commerce v. Khreich*, 915 F.2d 1000, 1005 (5th Cir. 1990) ("Section five of the Texas Recognition Act provides that a 'foreign country judgment need not be recognized' if certain conditions exist. These conditions are phrased as affirmative defenses. Therefore, the burden of non-recognition rested with Khreich.") (citation omitted); *McCord v. Jet Spray Int'l Corp.*, 874 F. Supp. 436, 440 (D. Mass 1994) (two exceptions to the inclusive nature of foreign judgments were raised, and the court determined that the "act specifically limits the defenses that may be raised in an action to enforce a foreign judgment."); *Fiske, Emery & Assocs. v. Ajello*, 577 A.2d 1139, 1141-43, 41 Conn. Sup. 376, 378-381 (Conn. Super. Ct. 1989) (the court noted that under the Foreign Money-Judgments Act, a foreign judgment will be recognized unless "one of the grounds for nonrecognition of the foreign judgment" is made out; the nonrecognition conditions were characterized as "defense[s]"). *Contra, Ackermann v. Levine*, 788 F.2d 830, 842 n.12 (2d Cir. 1986) (plaintiff sought enforcement of a foreign judgment under the Act and had to show *prima facie* that there was subject matter jurisdiction, personal jurisdiction, and that there were regular proceedings conducted by tribunals with procedures that are compatible with due process).

[1] While the issue is extremely interesting, we need not resolve it at this time because, as we will show, whether Pahlavi had to put in sufficient evidence to sustain a defense or whether she had only to point to weaknesses in the Banks' case, she carried her burden. *See Celotex v. Catrett*, 477 U.S. 317, 331, 106 S. Ct.. 2548, 2557, 91 L. Ed. 2d 265 (1986) (Brennan, J., dissenting) (heavier burden when moving party has burden of persuasion) and *Houghton v. South*, 965 F.2d 1532, 1536 (9th Cir. 1992) (same). As the district court pointed out, Pahlavi's position

was so persuasive that the Banks were going to have to point to something that refuted it. That was neither improper nor unfair.

B. *The Merits.*

Pahlavi's major bulwark against the Banks' attack is her assertion that the judgments cannot be enforced because she could not have had due process in Iran during the period that those judgments were obtained against her. That simple but crucial fact, she says, precludes enforcement of the Banks' judgments on any theory.[2] We agree with her premise, and, on the record of this case, we agree with the district court's conclusion as well.

[2] It has long been the law of the United States that a foreign judgment cannot be enforced if it was obtained in a manner that did not accord with the basics of due process. *See Hilton,* 159 U.S. at 205-06, 16 S. Ct. at 159. As the Restatement of the Foreign Relations Law of the United States succinctly puts it: "A court in the United States may not recognize a judgment of a court of a foreign state if: (a) the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with due process of law. . . ." § 482(1)(a) (1987).

We are aware of no deviation from that principle. In fact, as we have already shown, it was expressly incorporated into the Foreign Money-Judgments Act. Cal. Civ. Proc. Code § 1713.4; *see also Julen v. Larson,* 25 Cal. App. 3d 325, 327-28, 101 Cal.

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2. If that bulwark holds she need not fall back upon lesser ones, for example, lack of personal jurisdiction and statute of limitations bars. Of course, lack of personal jurisdiction, itself, has a due process aspect to it.

Rptr. 796, 798 (1972); *cf. Bank of Montreal v. Kough*, 612 F.2d 467, 470-71 (9th Cir. 1980) (the taking of jurisdiction must comport with due process). It can hardly be gainsaid that enforcement will not be permitted under California law if due process was lacking when the foreign judgment was obtained. Faced with that ineluctable proposition, the Banks argue that the Algerian Accords have somehow elided the due process requirement from the law of the United States as far as Pahlavi is concerned. With that we cannot agree.

The Algerian Accords do provide that Iran can bring actions to recover any of its assets from the family of the former Shah. *See Declaration of the Government of the Democratic and Popular Republic*, Point IV, para. 12, *reprinted in* Dep't St. Bull., Jan. 19, 1981, at 3 ("General Declaration").[3] They also provide that in litigation against the Shah's family "the claims of Iran should not be considered legally barred either by sovereign immunity principles or by the act of state doctrine and that Iranian decrees and judgments relating to such assets should be enforced by such courts in accordance with United States law." *Id.* at ¶ 14. It is upon this language that the Banks rest their claim that the United States courts cannot consider whether the judgments were obtained in accordance with due process. That is a foundation that crumbles under the weight the Banks seek to place upon it.

It is true that "[t]he clear import of treaty language controls

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3. That includes its instrumentalities. *See* General Declaration, art. VII, para. 3, at 4. For purposes of this opinion, we will assume, without deciding, that the Banks are instrumentalities of Iran. Although they have not submitted evidence to that effect, other courts have said that they are. *See New England Merchants Nat'l Bank v. Iran Power Generation & Transmission Co.*, 646 F.2d 779, 780, 791 (2d Cir. 1981); *Itek Corp. v. First Nat'l Bank of Boston*, 511 F. Supp. 1341, 1342 (D. Mass. 1981), *vacated*, 704 F.2d 1 (1st Cir. 1983).

unless 'application of the words of the treaty according to their obvious meaning effects a result inconsistent with the intent or expectations of its signatories.' " *Sumitomo Shoji Amer., Inc. v. Avagliano*, 457 U.S. 176, 180, 102 S. Ct. 2374, 2377, 72 L. Ed. 2d 765 (1982) (citation omitted). Where the Banks' argument goes awry is in the suggestion that the language in question removes due process considerations from the purview of the United States Courts. In the first place, it is notable that the Accords eliminate certain defenses sovereign immunity and the act of state doctrine but otherwise provide that enforcement of judgments shall be "in accordance with United States law." That law, of course, includes the due process requirement which we have already delineated.

Secondly, when Warren Christopher, then the former Deputy Secretary of State and one of the chief architects of the Algerian Accords, addressed the concerned members of the Committee on Foreign Affairs of the House of Representatives in 1981, he assured them that "Iran's claims to the property of the Shah and his family will have to be adjudicated in U.S. courts in full accordance with due process of law." *Iran's Seizure of the United States Embassy: Hearings before the House of Representatives Committee on Foreign Affairs*, 97th Cong., 1st Sess. 149 (1981). It would be most surprising if what he really meant was that due process would be applicable if the initial action were brought in the courts of the United States, a rather obvious point, but that those same courts would be expected to enforce any judgment obtained in Iran, regardless of due process considerations. Absent strong evidence to the contrary evidence not present in this record the only reasonable inference is that the United States intended that enforcement" in accordance with United States law" include the due process requirements that are usually demanded by our courts when they review foreign judgments.

[3] Finally, a construction of the Algerian Accords that permitted the taking of assets from a resident of this country by means of a judgment obtained without due process of law would raise grave questions about the enforceability of that part of the Accords. That question would be lurking in the case were we to accept the position that the Banks argue for. *See Boeing Co.*, 771 F.2d at 1284 (regarding lurking constitutional issues in the Accords); *cf. Dames & Moore v. Regan*, 453 U.S. 654, 688-89, 101 S. Ct. 2972, 2991, 69 L. Ed. 2d 918 (1981) (court upholds Algerian Accords but notes that enforcement may leave residual constitutional issues, at least as against the United States Government.) We see no reason to stretch the language of the Accords and thereby create those questions because we have no reason to think that the Accords were intended to change the law of this country in that backhanded a fashion. Thus, we hold that attempts to enforce judgments under the Algerian Accords are not exempt from due process defenses.[4]

Having so held, we are left with the question of whether the district court properly granted Pahlavi summary judgment on the due process issue. That is, did she show that she could not get due process in Iran? On this record, the answer is yes, as a precis of the evidence will show.

Pahlavi attached various reports to her motion to dismiss. Those included consular information sheets which gave travel

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4. Pahlavi also insists that the Algerian Accords are not self-executing. No doubt that is true. *See Boeing Co.*, 771 F.2d at 1283. However, the Accords have been implemented by executive orders. *See id.* at 1284; *Itek Corp.*, 704 F.2d at 4; *see also* 31 C.F.R. 35.217 (1994) (codifying para. 12 of Point IV of the General Declaration and specifically referring to the blocking of Pahlavi's assets in the United States); 31 C.F.R. § 535.301 (1994) (codifying Article VII, para. 3 of the General Declaration, defining what Iran and Iranian entity includes).

warnings from 1981 through 1993 and noted that anti-American sentiment could make it dangerous to travel in Iran. In particular, the State Department noted that "U.S./Iranian dual nationals have often had their U.S. passports confiscated upon arrival and have been denied permission to depart the country documented as U.S. citizens." While those advisories apply to American nationals, there is no reason to believe that the Shah's sister would have fared any better. Further, a 1991 report on terrorism was attached. That report stated that even then Iran was a continuing state sponsor of terrorism. The report recounted the assassination of a former Iranian prime minister and his aide in Paris, France. *See Patterns of Global Terrorism: 1991,* Dep't of State Bull., April 1992 at 30. Again, one would anticipate that the Shah's sister would encounter great danger should she try to enter Iran.

In addition, other materials from the Department of State were obtained, pursuant to the request of the district court.[5] One of those documents is the portion of the Country Report on Human Rights Practices for 1982 regarding Iran. *See* Report by Department of State to Committee on Foreign Relations U.S. Senate and Committee on Foreign Relations U.S. House of Representatives, 98th Cong. 2d Sess. 1141 (Joint Comm. Print 1983).[6] That report indicates that trials are rarely held in public, that they are highly politicized, and that the regime does not believe in the independence of the judiciary. *Id. See also* Country Report for 1986 at 1159 (report detailing denials of fair public

5. The Banks did not object to that. As Pahlavi notes, any objection to the consideration of those materials has been waived. *See Faulkner v. Federation of Preschool & Community Educ. Ctrs., Inc.,* 564 F.2d 327, 328 (9th Cir. 1977) (per curiam).

6. This and similar reports are hereafter referred to as "Country Report," followed by the year for which the report was issued.

trial and discussing the purchase of verdicts in civil trials); Country Report for 1983 at 1259 (same); Country Report for 1984 at 1238 (same); Country Report for 1985 at 1237 (same). In addition, a 1990 declaration from Laurence Pope, a State Department official, was submitted. Pope declared that under the post-Shah regime "judges are subject to continuing scrutiny and threat of sanction and cannot be expected to be completely impartial toward U. S. citizens," and that "U. S. claimants can have little reasonable expectation of justice." The declaration also pointed out the fact that attorneys in Iran "have been officially discouraged from representing politically undesirable interests," and, "[w]itnesses to events living in Iran . . . are likely to be subject to the same risks as lawyers." Those observations concentrated on the effect upon American citizens, but it can hardly be doubted that they would apply equally to Pahlavi. Further, the Country Report for 1986 suggested that people like Pahlavi (those with close ties to the Shah's regime) could not return to Iran without reprisals. *See* page 1163. That report also indicated that the revolutionary courts could take over cases that were formerly within civil court jurisdiction and could overturn the decisions of civil courts. *See* page 1159. Also, restraints on arbitrary actions of the revolutionary courts had been greatly weakened. *Id.*

Pahlavi did not put in a declaration which specifically stated that she would be treated badly by the regime. Her failure to present that more specific evidence does weaken her position somewhat. Nevertheless, a common sense reading of the evidence indicates that if it were the only evidence placed before the trier of fact a verdict would be directed in her favor on the ground that she could not possibly have obtained a fair hearing before the courts of Iran had she attempted to fight the Banks' claims against her.

That conclusion is further buttressed by decisions which recognize that in the early to mid-1980s Americans could not get a fair trial in Iran. *See McDonnell Douglas Corp. v. Islamic Rep. of Iran*, 758 F.2d 341, 346 (8th Cir.) ("We thus take judicial notice that litigation of the dispute in the courts of Iran would, at the present time, be so gravely difficult and inconvenient that McDonnell Douglas would for all practical purposes be deprived of its day in court."), *cert. denied*, 474 U.S. 948, 106 S. Ct. 347, 88 L. Ed. 2d 294 (1985); *Rockwell Int'l. Sys., Inc. v. Citibank, N.A.*, 719 F.2d 583, 587-88 (2d Cir. 1983) ("Neither [party] argues that the post-revolutionary Iranian judicial system is capable of affording an adequate remedy; courts that have passed on this contention have consistently rejected it."); *Harris Corp. v. National Iranian Radio and Television*, 691 F.2d 1344, 1357 (11th Cir. 1982) ("It is clear that the Islamic regime now governing Iran has shown a deep hostility toward the United States and its citizens, thus making effective access to the Iranian courts unlikely."). There is no reason to think that Pahlavi would have had better access to justice. After all, much of the hostility to United States citizens stemmed from this country's connection to the Shah's regime, and it is hardly necessary to say that Pahlavi's connection was, if anything, closer.

[4] Of course, had the Banks put in any evidence of substance, summary judgment might have been averted. But the Banks' response to Pahlavi's evidence was information and belief declarations from their counsel. Those were entitled to no weight because the declarant did not have personal knowledge. *See Taylor v. List*, 880 F.2d 1040, 1045 n.3 (9th Cir. 1989); *Columbia Pictures Indus., Inc. v. Professional Real Estate Investors, Inc.*, 944 F.2d 1525, 1529 (9th Cir. 1991), *aff'd*, __ U.S. __, 113 S. Ct. 1920, 123 L. Ed. 2d 611 (1993); *see also Garcia-Franco v. INS*, 748 F.2d 518, 519 (9th Cir. 1984)

(Duniway, J., concurring and dissenting) ("The only affidavit filed was one by [the] attorney. . . . In it, he repeats what he says in his motion, on information and belief. This was, on its face, a totally insufficient showing. It does not raise *any* issue. . . .").

[5] In addition, even if the material had been in proper form, the matters addressed by the declaration and the exhibits did not directly come to grips with the question placed at issue: whether Pahlavi could receive a fair trial in Iran. Instead, the information submitted merely indicated that service was made by publication, that Pahlavi should have received notice, and that Iranian experts had considered the claims against Pahlavi. Portions of the written law of Iran were also included.

The Banks did submit information to the effect that Pahlavi had argued in an earlier unrelated action that a claim against her would more properly be tried in Iran. Perhaps in so doing the Banks hoped for a kind of judicial estoppel, which would preclude Pahlavi from taking a different position in this case. *See Russell v. Rolfs*, 893 F.2d 1033, 1037 (9th Cir. 1990) (principles of judicial estoppel), *cert. denied*, 501 U.S. 1260, 111 S. Ct. 2915, 115 L. Ed. 2d 1078 (1991). At any rate, a review of that information reveals that even in the former proceeding Pahlavi had complained that the Iranian government "has seen fit to nullify fundamental fairness and due process." Her actual argument was that the case should be dismissed on *forum non conveniens* grounds because Iran would be the proper place for trial. She then added that the fact that Iran would not give her a fair trial should not allow it to argue against her position that it was the most convenient forum. The result, therefore, would have been that Iran could not effectively take action against her here or there. That is not truly inconsistent with her present position.

[6] In short, the Banks failed to show that there was a material issue of fact on the question of whether Pahlavi could receive a trial in Iran that would be characterized by a "system of jurisprudence likely to secure an impartial administration of justice." *Hilton*, 159 U.S. at 202, 16 S. Ct. at 158. Thus, summary judgment was properly granted in her favor.

CONCLUSION

Nations are not inexorably bound to enforce judgments obtained in each other's courts. However, our courts will enforce foreign judgments that arise out of proceedings which comport with basic principles of due process. Neither the Foreign Money-Judgments Act nor the Algerian Accords nor any case interpreting them deviates from that principle.

[7] The evidence in this case indicated that Pahlavi could not expect fair treatment from the courts of Iran, could not personally appear before those courts, could not obtain proper legal representation in Iran, and could not even obtain local witnesses on her behalf. Those are not mere niceties of American jurisprudence. *Cf. Ma v. Continental Bank N.A.*, 905 F.2d 1073, 1076 (7th Cir.), *cert. denied*, 498 U.S. 967, 111 S. Ct. 430, 112 L. Ed. 2d 414 (1990) (citing *Wuchter v. Pizzutti*, 276 U.S. 13, 48 S. Ct. 259, 72 L. Ed. 446 (1928)). They are ingredients of "civilized jurisprudence." *Hilton*, 159 U.S. at 205, 16 S. Ct. at 159. They are ingredients of basic due process.

Therefore, because Pahlavi would have been entitled to a directed verdict had this case gone to trial on this record, the conclusion that she was entitled to summary judgment was apodictic.

AFFIRMED.

APPENDIX B — CIVIL MINUTES DATED JANUARY 4, 1994

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES — GENERAL

Case No. CV92-5479-JSL Date Jan 4, 1994

Name Bank Melli Iran etc -v- Shams Pahlavi

DOCKET ENTRY:

* * *

PRESENT:

HON J. SPENCER LETTS, JUDGE

Nancy J. Webb	Terry Kramer
Deputy Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

Patrick Gunn
Thomas A. Lenz

ATTORNEYS PRESENT FOR DEFENDANTS:

Penny Costa
Ralph Zarefsky

PROCEEDINGS: HEARING: Defendant's motion to dismiss

Case called. Counsel make statements to the Court

The Court grants the motion.

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA FILED JANUARY 10, 1993 AND ENTERED JANUARY 12, 1994

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV 92-5479 JSL

BANK MELLI IRAN, ET AL., Plaintiffs,

v.

SHAMS PAHLAVI, ETC., Defendant.

[Stamp]
THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP RULE 77(d)

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS

The Motion of defendant Shams Pahlavi, etc. to dismiss came for hearing regularly on January 4, 1994.

Having reviewed the papers filed in connection with this matter, having heard oral argument, and being fully apprised of the relevant facts and law,

IT IS HEREBY ORDERED that the motion of defendant Shams Pahlavi, etc. be GRANTED.

IT IS SO ORDERED.

DATED: JANUARY 10, 1993

s/ J. Spencer Letts
J. Spencer Letts
United States District Judge

APPENDIX D — CORRECTED ORDER OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA FILED JANUARY 20, 1994 AND ENTERED JANUARY 31, 1994

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV 92-5479 JSL

BANK MELLI IRAN, ET AL.,

Plaintiffs,

v.

SHAMS PAHLAVI, ETC.,

Defendant.

[Stamp]
THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP RULE 77(d)

CORRECTED ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

The Motion of defendant Shams Pahlavi, etc. to dismiss came for hearing regularly on January 4, 1994.

Having reviewed the papers filed in connection with this matter, having heard oral argument, and being fully apprised of the relevant facts and law,

IT IS HEREBY ORDERED that the motion of defendant Shams Pahlavi, etc. be GRANTED.

IT IS SO ORDERED.

DATED: Jan 20, 1994

s/ J. Spencer Letts
J. Spencer Letts
United States District Judge

APPENDIX E — TRANSCRIPT OF PROCEEDINGS MONDAY, MARCH 29, 1993

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE J. SPENCER LETTS, PRESIDING
UNITED STATES DISTRICT COURT JUDGE

CV-92-5479-JSL

BANK MELLI IRAN, et al.,

Plaintiffs,

vs.

SHAMS PAHLAVI,

Defendant,

TRANSCRIPT OF PROCEEDINGS

Monday, March 29, 1993

Los Angeles, California

Motion to Dismiss

Terry Kramer, CVR
Official Reporter
United States District Court
419 United States Courthouse
312 North Spring Street
Los Angeles, California 90012
(213) 680-1908

Appendix E

[2] APPEARANCES:

For the Plaintiffs:

Atkinson, Andelson, Loya, Ruud & Romo
13304 East Alondra Boulevard
Cerritos, California 90701

BY: Patrick A. Gunn
Attorney at Law

For the Defendant:

Baker, Hostetler, McCutchen Black
600 Wilshire Boulevard
Los Angeles, California 90017

BY: Ralph Zarefsky
Attorney at Law

[3] Los Angeles, California, Monday, March 29, 1993
1:42 o'clock p.m.

THE CLERK: CV-92-5479-JSL, Bank Melli Iran versus Shams Pahlavi.

MR. ZAREFSKY: Good afternoon, Your Honor.

Ralph Zarefsky for defendant Shams Pahlavi, the moving party.

THE COURT: Good afternoon.

Appendix E

MR. GUNN: Good afternoon, Your Honor.

Patrick Gunn on behalf of the plaintiffs and responding parties.

THE COURT: I can't imagine there's anybody out there looking forward to talking to me this afternoon anymore. Actually, I'm not in that bad a mood.

Let me tell you about this one. Tell me why the right thing to do isn't to solicit an amicus position from the United States Government.

I'm not going to, I don't think, rule on the basis of what's before me that they don't have any due process in Iran, even as to this party. It could be true. I really don't have any opinion about that, but I don't think I'd rule on these bases as to the personal jurisdiction.

I think the papers may be clear, but if they were, I didn't get them as clearly as I might have. It [4] appears to me that the business that's the subject of the lawsuit was done while the defendant here was a resident of Iran. If that is true, I would not think that service by publication was inappropriate, so I would expect that to be sufficient to confer jurisdiction, but I'm not sure that I understand the underlying business basis.

Do you want to respond to that?

MR. ZAREFSKY: Yes, Your Honor, I would.

The defendant of course is the elder sister of the former Shah of Iran.

Appendix E

THE COURT: Yes.

MR. ZAREFSKY: The judgments that were rendered in Iran, and which plaintiff seeks to reduce to a domestic judgment here, were based on promissory notes that the defendant entered into when she was in Iran.

She of course left Iran just shortly before the Iranian revolution, and the judgments in Iran were rendered after she left Iran.

THE COURT: Yes, but I was talking about — let me parse it out — as the jurisdiction, if she signed the promissory notes that are the subject of that judgment while he was still in Iran, and then left, I would expect that jurisdiction by publication would be sufficient. I don't ink that would violate the due process in this country.

MR. ZAREFSKY: Well, I think the case law is to [5] the contrary I mean, the issue is not whether the event which gave rise to the lawsuit in Iran occurred in Iran so that the Iranian courts could probably adjudicate it.

The issue is whether when the Iranian courts adjudicate it, what kind of notice do they have to give to the defendant that they are adjudicating it.

And we've cited in our moving papers the authority that indicates that when you're talking about foreign judgments, service by publication is not sufficient.

THE COURT: You didn't cite any authority that so far as I could tell the underlying business that was subject to the

judgment was done by a foreign resident at the time that that foreign resident was domiciled in the foreign country. Not one of your cases appeared to have that element.

MR. ZAREFSKY: And I'm not arguing with you on that point.

THE COURT: And so your authority, in my judgment isn't good, because it wouldn't be good here in the United States.

You come to California and do some business and flee the jurisdiction, you can be served by publication, and a judgment following that would be good in due process terms.

MR. ZAREFSKY: You can serve by publication in California if certain prerequisites have been met, and the [6] first of those is an attempt to serve otherwise.

And here what you have is at the very time —

THE COURT: Again, I understand that, but there's nothing happening there. I submit to you, there's really nothing happening in that distinction here.

Whether the jurisprudence to which she was being subject had any chance of producing a fair trial for her, it seems to me that's a very serious issue, but I don't know that I can rule on the strength of these papers.

The first thing to do is ask the United States if it chooses to express an opinion about it.

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MR. ZAREFSKY: Your Honor, I have no problem with the Court doing that, assuming the Court does not wish to deal with the statute of limitations issue that we also presented.

But I will say that the United States in it's publications has made clear the position of the United States that we do not maintain diplomatic relations with the present Government of Iran, and that there is clear indication of which I think the Court can take judicial notice of hostile relations between the United States and Iran, and particularly between the Government of Iran and the former royal family .

THE COURT: But I don't understand that that's the test.

[7] MR. ZAREFSKY: Well, I —

THE COURT: Whether we like them or not isn't the test, as I understand it.

MR. ZAREFSKY: It's not a question of like, its a question of whether a member of the former royal family could have any assurance of safety in returning to a government — in returning to a country where the family has been ousted by a violent revolution.

THE COURT: And, again, what I don't think is that newspaper articles that our government doesn't extend diplomatic relations or doesn't approve of the replacement government meets the test.

MR. ZAREFSKY: I'm not talking about newspaper articles, I'm talking about publications by the Department of State.

THE COURT: It doesn't matter. All those do, as I read them, is say, gee, this is a reprehensible thing and that's a terrible government.

MR. ZAREFSKY: And they also state that the United States does not maintain diplomatic relations with —

THE COURT: Yes.

MR. ZAREFSKY: — the Government of Iran.

THE COURT: It says all three of those but —

MR. ZAREFSKY: That's correct.

THE COURT: — you didn't cite any authority [8] that says that no judgment should be honored by people in places that we don't have diplomatic relations.

MR. ZAREFSKY: And I'm not talking about no judgments, Your Honor, I'm talking about this specific situation where we have a member of the former royal family who cannot, under any —

THE COURT: I'm not going to take judicial notice of that. I have no doubt it's right, just give me better information on it, or let me ask the government.

You can cover it, but right now there's no evidence before me, and I'm not going to take judicial notice of it.

MR. ZAREFSKY: Very well.

Appendix E

THE COURT: But I think you can cover it, because it seems to me almost judicially noticeable.

MR. ZAREFSKY: I'm just not quite there yet.

THE COURT: Not quite, because having the government say I don't approve, our government say, approve of that government, isn't a statement that their courts would not afford due process, either in general or to particular person.

MR. ZAREFSKY: Well, but — and I hesitate to beat this dead horse, Your Honor — the government has done more in it's publications. It has warned against residents of the United States even traveling to Iran.

[9] Now, if a resident of United States can't travel to Iran, then how can it appear and contest a lawsuit?

THE COURT: Well, indeed, it can't in that circumstance.

MR. ZAREFSKY: And that's in the papers, Your Honor. I put the travel advisories in the papers. Publications from the Department of State, official stated —

THE COURT: No.

MR. ZAREFSKY: — doctrine of the government.

THE COURT: I read it, but I don't think so, because that doesn't go to the test. The United States could say the same thing if it was a heavy earthquake territory.

MR. ZAREFSKY: But it's not on the basis of an earthquake, Your Honor.

THE COURT: No, I understand that.

All I'm saying is that the test is that had she gone, she couldn't have received a fair trial, and I don't think anything you've given me quite meets that test.

It probably exists, and I'm not at all sure that the government didn't — the government may volunteer it to me —

MR. ZAREFSKY: Your Honor —

THE COURT: — if I give them a chance.

MR. ZAREFSKY: — if I could refer to just one of those travel advisories, for example —

[10] THE COURT: I must say, the plaintiff is obviously wasting your money trying to go this way, why are you doing it?

MR. GUNN: Would you like a comment from the table, Your Honor, or —

THE COURT: No, I'll give you the lectern in a minute.

MR. GUNN: Very good.

MR. ZAREFSKY: All right.

For example, Your Honor, the travel advisory, which was issued on February 11th, 1981, the Department of State warned

American citizens, "All American citizens contemplating travel to Iran are advised that they should avoid such travel," blah, blah, blah.

And then it goes on further and says, "The possibility exists that American citizens traveling to Iran could be detained without charge or taken hostage."

I mean, that's one such statement.

THE COURT: It's self-evident why you can't rely on that.

MR. ZAREFSKY: I'm sorry?

THE COURT: It's self-evident why you can't rely on that, is it not — yes, it is. I won't make you expunge. Of course it is.

You can rely on it. It's persuasive, it [11] doesn't go to the point. No doubt you're right, but you're asking me to take what amounts to judicial notice that the sister of the Shah would have been persona non grata to the point that she couldn't have gone and defended herself.

Now, if she could have gotten a fair trial, then surely they could have protected her enough to get there.

The fact that there may or may not have been risk to American citizens that we decided we ought to say, isn't germane to her problem? I have very little doubt that she had a problem, but it isn't before, so you can't do it.

Why are the plaintiffs doing this; they're not going to succeed, are they? I mean, why not try to prove your case.

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MR. GUNN: Your Honor, that issue is not presently before the Court on this motion; however, to please the Court, my client's direction is to follow the action and proceed. That's why the action is before you.

THE COURT: So there's no good reason.

MR. GUNN: No, Your Honor, that's not the case; however, I'm not —

THE COURT: But I asked.

You're not at liberty to tell me; is that what you're saying?

MR. GUNN: No, Your Honor, not at all.

[12] Why the plaintiffs have elected to proceed in this Court —

THE COURT: In this manner.

MR. GUNN: — in this manner is to pursue recovery of the property that is the subject of the complaint, and all related damages.

With all due respect to the Court, what forum would you refer the plaintiffs, too?

THE COURT: Maybe, but I doubt it. The limitations has run on your underlying claim. There are all kinds of ways to pursue people. This person, I assume, is still alive.

Appendix E

I just wonder why you think you're ever going be able to actually enforce a judgment against her, which is based on jurisdiction arrived at by publication. I mean, you must have some good reason for thinking so.

The fact that I'm not stretching a little bit to pour you out today doesn't suggest to me that there's any livelihood that you're not going to get poured out tomorrow.

MR. GUNN: We recognize that, Your Honor.

THE COURT: So one wonders why you would then. Why not just pursue her by trying to get jurisdiction of her and suing her?

MR. GUNN: Again, Your Honor, are you saying — speaking of in Iran directly?

[13] THE COURT: Well, she's here, isn't she?

MR. GUNN: Yes, she is, Your Honor.

THE COURT: You can get jurisdiction over here.

MR. GUNN: Yes, Your Honor.

THE COURT: You couldn't sue her on those notes?

MR. GUNN: Your Honor, thank you.

The notes were the subject of a prior action in the Los Angeles Superior Court, Your Honor; that case is cited in my opposition papers.

That action was dismissed following, at that time, Pahlavi's motion to quash service. In relation to that motion, the defendants urged that the plaintiffs proceed with their claims in Iran, which is what they had done. That former case in the Superior Court was dismissed on a technicality related to service of process.

THE COURT: Yes.

MR. GUNN: The Court can take judicial notice of a related action, Case No. 069489, which is still pending in the Los Angeles Superior Court, West District, which is currently the subject of appeal.

The case was dismissed in relation to a discovery matter, Your Honor; however, in that action it took excess of 10 years —

THE COURT: I'm really sorry I asked, so we'll [14] just do this by the numbers. You'll submit me something else. I'll see if I can get the United States to say something, and then we'll have a ruling. It's not today.

MR. GUNN: Very good.

Thank you, Your Honor.

THE COURT: All right.

MR. ZAREFSKY: Your Honor, would you like me to ask the United States to file a brief; is that the Court's ruling?

THE COURT: I can do it myself, or you can. I was planning to just invite an amicus brief, get the thing under submission. They may not do it.

MR. ZAREFSKY: They may not —

THE COURT: And if they do, it will be easy; if they don't, then you'll have to think of something.

I can't imagine you won't. Maybe you won't.

MR. ZAREFSKY: I'm sorry.

THE COURT: I said it's hard for me to imagine you can't think of something, but —

MR. ZAREFSKY: I have a very fertile imagination, Your Honor.

THE COURT: I mean, really, because I feel like I can almost take judicial notice, but I'm not going to do because it doesn't seem to me that that's fair to the plaintiff, but it's so close to judicially noticeable that it [15] seems to me that it shouldn't be very hard to add to it, but if you can't, then you'll never get a ruling.

MR. ZAREFSKY: I will see if I can build a better record for the Court, Your Honor.

THE COURT: All right.

MR. GUNN: Your Honor, may I address the Court?

THE COURT: Sure.

MR. ZAREFSKY: Excuse me.

Appendix E

Before Mr. Gunn does, there was one statement that he made, which I would like to correct. These notes were not the subject of a prior lawsuit. There was a single note that was the subject of a prior lawsuit, but these 161 notes were not the subject of a prior lawsuit.

MR. GUNN: Your Honor, I recognize clarification, and thank Mr. Zarefsky for doing that.

Your Honor, I'd like to inquire of the Court as to the breath of the statement it seeks from the United States Government; will this address be due process issues on service and notice?

THE COURT: No.

I was expecting to ask them if they chose to advise me on whether in the circumstance presented by the motions the sister of the former Shah could have gotten a fair trial.

MR. GUNN: You Honor, the only point I would [16] raise in response to that is that the issue of the proceedings in Iran is, one, an issue of fact, and more significantly for the purposes of this motion, which is pursuant to Rule 12(b)6, is the extent of the complaint and whether a claim is stated on the face of the pleadings.

Thank you.

THE COURT: Both sides have supplemented the record already, have they not?

I don't think it is on the face of the record even now. I've already got supplemental things, so I'm treating it as a summary judgment motion. That's sufficient.

Appendix E

MR. ZAREFSKY: Very well.

THE COURT: I've got people waiting.

Thank you.

Anything else; is that it?

We'll be in recess.

Appendix E

CERTIFICATE

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPTION REPORTED TO THE BEST OF MY ABILITIES, OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.,

s/ Terry Kramer
TERRY KRAMER
CERTIFIED VERBATIM REPORTER

1/14/94
DATE

APPENDIX F — TRANSCRIPT OF PROCEEDINGS TUESDAY, JANUARY 4, 1994

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE J. SPENCER LETTS, PRESIDING
UNITED STATES DISTRICT COURT JUDGE

CV-92-5479-JSL

BANK MELLI IRAN, et al.,

Plaintiffs,

vs.

SHAMS PAHLAVI,

Defendant,

TRANSCRIPT OF PROCEEDINGS

Tuesday, January 4, 1994

Los Angeles, California

Motion to Dismiss

Terry Kramer, CVR
Official Reporter
United States District Court
419 United States Courthouse
312 North Spring Street
Los Angeles, California 90012
(213) 680-1908

Appendix F

[2] APPEARANCES:

For the Plaintiffs:

Atkinson, Andelson, Loya, Ruud & Romo
13304 East Alondra Boulevard
Cerritos, California 90701

BY: Patrick A. Gunn
Attorney at Law

-and-

Thomas Lenz
Attorney at Law

For the Defendant:

Baker, Hostetler, McCutchen, Black
600 Wilshire Boulevard
Los Angeles, California 90017

BY: Ralph Zarefsky
Attorney at Law

-and-

Penny Costa
Attorney at Law

Appendix F

[3] Los Angeles, California, Tuesday, January 4, 1994 10:22 o'clock a.m.

THE CLERK: CV-92-5479-JSL, Bank Melli Iran, etc., versus Shams Pahlavi.

Appearances.

MR. GUNN: Good morning, Your Honor.

Patrick Gunn of Atkinson Andelson for the plaintiffs and responding parties.

THE COURT: Good morning.

MR. LENZ: Good morning, Your Honor.

Thomas Lenz of Atkinson Andelson for the plaintiffs .

THE COURT: Good morning.

MR. ZAREFSKY: Good morning, Your Honor.

Ralph Zarefsky for defendant Shams Pahlavi.

And my associate.

MS. COSTA: Penny Costa, Your Honor.

THE COURT: Good morning.

I think actually that I probably owe all of you an apology, and if I do, I'll go ahead and make it; I don't see any reason not to.

Appendix F

Let me tell you what I think the history is to date. I'll give anybody a chance to add to his papers if here is anything to add, but I don't see why there would be [4] at this late date.

At the very first hearing I was reluctant to conclude that any foreign country's judicial process was not due process. These are not terms of art. I didn't want to believe, or at least hold, that you can't get a fair trial anywhere, that anybody can't get a fair trial anywhere until I had made sure that I was looking at reality as understood outside of the confines of the original evidence.

I asked for additional information to come from the government about its views, frankly, in the expectation that the government would do what they did do and give me a hint one way or the other.

What they did do, they furnished with pretty much published things that were all ready public as opposed to choosing this forum to say other things.

I saw, however, no evidence in anything that I got from the government that it had reservations about the accuracy of the things that it was giving me.

Having dealt with the government, not in this circumstance but in not dissimilar circumstances often enough, I have had an experience with the government, in the cover letter, or however they do it, giving me indication that maybe I wouldn't want to rely on the published sources. I got nothing like that at this time.

Having read the government's stuff, having read [5] where I was, as I now remember it, ready to rule, and I think all I had in mind was, because it's case dispositive, giving the plaintiff one last chance, but against a very firm tentative.

Appendix F

It was, if I didn't announce it — I will now — it was a very firm tentative at that time and, frankly, I think on the assumption that it turns into a final ruling, the apology you're probably owed is that you needed to get it on appeal a little sooner.

I really haven't seen any reason why the conclusions that I reached right off the bat, as soon as I had the additional information submitted from the government, I haven't seen any reason to change that view.

The question isn't what the letter of the law is, the question is whether anybody pays any attention to it, or did in these circumstances, and it seems to me that the evidence that I have before me suggests that there was no reason to believe that the letter of the law would have been followed or that this particular defendant could have had due process had she appeared at these proceedings, because I have no reason to believe that she could have. I don't think that anything that came out of them is entitled to judicial respect, if you will.

If you have anything to add to your papers, I'll be glad to hear it. There's not a lot of point in [6] rehashing your papers.

MR. ZAREFSKY: We were the moving party, and I believe that I've set forth as well as I can in my papers the points that I wanted to make. I think I've conveyed them to the Court —

THE COURT: Actually, what I did, I didn't finish my sentence — it's not your fault —

MR. ZAREFSKY: I'm sorry.

THE COURT: — but mine. I'm looking at you, but expecting you to respond.

MR. ZAREFSKY: And I think I've said essentially that, that if I could have said anything more in my papers, I would have.

THE COURT: Sure.

MR. ZAREFSKY: Thank you, Your Honor.

MR. GUNN: Your Honor, understanding your statements, you refer specifically to the letter you received from the government dated June 16 of this year from Mr. Hertz, I would urge the Court that while the government did not give you any indication of a lack of reliability, I think is the term —

THE COURT: Let me say it differently.

If the government had indicated, as they do sometimes, a belief that it would be inappropriate for the Court to act in accordance with the inferences I would draw [7] from the papers they gave me, I would have considered that very carefully, but they didn't.

MR. GUNN: Thank you, Your Honor.

I believe the lack of an indication of the lack of reliability of these published articles is not dispositive of the issue before the Court, Your Honor.

At the last hearing on March 29, you indicated you felt the burden confronted by the plaintiffs was not insurmountable, and that you requested some indication that due process protections may have been afforded the defendant.

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Without going into the materials we've provided the Court, I would merely urge that a positive inference should not be drawn from Mr. Hertz' letter by the lack of any indication of the lack of reliability of published materials, rather I see the government's response as an effort to skirt your question and avoid a direct response where they had the opportunity to provide a direct response.

Merely referring to information previously provided to the Court, or materials very similar to those by defense counsel, is not a direct response.

The materials provided indicated statutorily —

THE COURT: I didn't say I drew the inference from it; what I said, that was the best way, and, indeed, I thought the only way to negate the inference, which the letter did not do.

[8] MR. GUNN: With that in mind, Your Honor, then I would merely ask the Court for a specific statement of reasons, excluding those previously made on the record at the last hearing, in order to have a perfect record for future appeal.

THE COURT: I think you have it.

I don't know that I need to rehash it. What I said was that on the basis of published materials, which were generally applicable and with no thought — published by and large by the government — with no thought or opportunity for thought about how they might be construed in the context of particular facts, that I disliked and wasn't willing to draw the inference that those things should be applied to these facts until I'd given the government an opportunity to negate that inference, to give the government the opportunity to say, no, either these things should not be attributed

to the government at all, which would have been unlikely in the circumstance, or even though attributed to the government and fairly attributed to the sources, they should not be read as being applicable to the specific facts.

That opportunity was given to them, they didn't avail themselves of it, so I'm left with drawing my own inferences from those materials, having given the publisher of the materials the opportunity to negate that inference.

The inference that I draw is that this partic- [9] ular defendant at that time couldn't have gotten a fair trial in Iran as to these issues, so I don't know that there's anything to add to that.

MR. GUNN: Your Honor, one question I would have, the letter that Your Honor directed to the Department of State, we did not receive a copy; is a copy in the court file?

THE COURT: To be candid, I don't know.

I don't know why you didn't get a copy.

I don't see it.

The person from whom I would get it is not here. This is my law clerk. It doesn't seem to be in the file, and the file is before me. The letter back obviously is.

MR. GUNN: Your Honor, then I would kindly ask — indications are from defense counsel that they did not receive a copy of the letter, either. If I could respectfully request that the Court include a copy of that letter?

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THE COURT: It says there's a letter. I started to say it's not clear to me that there is a letter because I don't remember it, but, yes, of course.

MR. GUNN: Thank you.

As a final matter, Your Honor, at the prior hearing you indicated you would handle this matter, the defendant's motion, as one for summary judgment, although [10] filed under Rule 12(b)6 as one to dismiss.

THE COURT: Yes.

MR. GUNN: I believe you made that statement based on your interpretation that while the defendants had introduced extrinsic evidence, you believed the plaintiffs had done so in response, thereby waiving their right to contest the conversion to a motion for summary judgment; is that Your Honor's position?

THE COURT: No, I don't know that I've articulated that either way. If there's going to be a point made out of that — which I don't want to have it — if you're going to make a point out of that, I'll deny it, and then they'll make the motion for summary judgment, what are you going to do, start over; surely not.

I think now you're not entitled to raise it just because it's too late. If that's something that you want to raise, you should have said it before, because I'm not going to have now a summary judgment motion on this issue.

If you wanted me to deny this so that you could do something else, since I've already said I'm considering extrinsic evidence, you have to either say on a timely basis, I want to submit some

more, which you haven't said, or you have to say that I'm going to contest it.

You can't really now say, now that you haven't [11] won on this issue, gee, I want a second bite of this apple; now that I know that I didn't win, I want to contest it as a 12(b)6 motion and put it into summary judgment motion so I can introduce some more evidence, you had an opportunity to introduce evidence; that's what this is about.

MR. GUNN: I understand, Your Honor.

Your Honor, for the record, and with all due respect —

THE COURT: Sure.

MR. GUNN: — the extrinsic evidence presented on behalf of the plaintiffs was at Your Honor's direction as a matter — he wanted information on.

The original opposition papers will indicate we noted defendant's introduction of extrinsic evidence, and that the plaintiffs are objecting to it.

And the record of their original hearing will also indicate our challenge of the characterization of —

THE COURT: What do you want to do?

MR. GUNN: Your Honor, I'm merely making the record for —

THE COURT: I don't want to hear a record; what do you want to do?

Appendix F

Now I'm going to reconsider every ruling I've ever made; what do you want me to do?

I'm not going to have it. I'm not going to [12] have a stupid appeal over this with that as the issue so I get this thing back so you can find some more evidence; what do you want me to do?

I don't want to hear it. You have some idea of what you want me to do right now, you tell me. I have no ruling, I'm reconsidering everything; what do you want me to do?

MR. GUNN: With all due respect, Your Honor, I'm not playing a game with the Court, I have —

THE COURT: Of course you are.

MR. GUNN: No, I'm not.

THE COURT: Well, then what do you want me to do?

MR. GUNN: I would like a clarification of his Honor's ruling as to whether or not it's on a motion pursuant to Rule 12(b)6 or Rule 56 for summary judgment.

With all due respect, I'm not playing a game with you. I merely want to know the basis of the Court's ruling.

It's not so I can make —

THE COURT: What I want to say — and this is what I did say the first time, so if it's not a game, then you're doing a poor job; make up your mind.

Appendix F

And I don't care which.

This is a circumstance that before I ruled, the [13] papers they had — and they put in some additional paper —if you want to say, I don't want this heard as a 12(b)6 motion viewed as a summary judgment, if you want to say that, say it on a timely basis and I'll deny this.

It's easy enough, I'll deny it six months ago, nine months ago, and then I'll say, fine, we're going to have one month's discovery, or whatever, and then I'll take it as a summary judgment motion.

In this case, what I would have done — I can tell you what I would have done — I would have said, I'll let you file a summary judgment motion now, and I'll let you file another one later; that's what I would have done.

There's no law that says I can't let somebody file three summary judgment motions if I want to, so that's what I would have said.

If you want to make an issue of whether this can be heard as a summary judgment motion, I won't hear it, I'll just deny it and file it as a summary judgment motion today and I'll hear it as a summary judgment motion, what would you have done; nothing.

I submit to you, if you can tell me something you would have done, I'll have to think about it. I have clear power to do that. You didn't ask me to do it or I would have done it, and I don't want to hear it now.

If you want to hear it now, then that's what [14] I'm going to

do. I'm going to let him do seriatim summary judgment motions. I'll deny this one — you better have something to say — he'll file it as a summary judgment motion tomorrow.

And if all you want to do in response to that motion is waste my time and his money, I'm not going to be grateful. If you've got something else in mind, tell me what it is.

MR. GUNN: Matters supporting plaintiff's position are set forth in their briefs, Your Honor.

THE COURT: That wasn't responsive.

Are you standing — because I will regard in hindsight whether you did this frivolously or not — are you standing on the distinction between a summary judgment motion and your right to contest it and my right to hear it as a 12(b)6 motion treated as summary judgment, because if you are, I'm going to deny it now, he's going to file it as a summary judgment motion tomorrow, I'm going to hear it in two more weeks, you're either going to have something to say or you're not, and if you don't, I'm going to grant it as a summary judgment motion.

Now, are you going to put me to that or not, because you either have an appellate issue on this or you don't. I am not going to be reversed on this case on having heard it as a 12(b)6 motion heard as summary judgment.

[15] If you're threatening me with reversal in this case with that, then I'll simply deny the motion and he can file it again tomorrow. If you have nothing to say when I hear that motion, you will not be looking at a grateful Court.

Now, are you standing on that distinction or not?

MR. GUNN: Your Honor, for clarification, I would not venture to threaten the Court with anything.

THE COURT: Oh, come on.

MR. GUNN: I would not and I have not.

THE COURT: I am threatened.

If you appeal, I'm threatened with reversal. I don't care about reversal. In order that the record be clear — I don't care about the record either on this, but as long as you do, I do — the threat of reversal is the threat that they will have to spend more money defending this case, and that having spent that money it will go off in the same way for exactly the same reasons based on exactly the same information.

That is a bona fide threat, not to me but to the defendants. It is a waste of money. If I deny their motion today and invite a summary judgment motion tomorrow and you have nothing to say, you will have wasted their money.

[16] If you are going to stand on your protest that somehow this should not have been treated as a summary judgment motion, then I'm simply going to deny it and we'll go through that exercise.

I think this is very late, I don't think it should be done this way, but I am not going to risk for these defendants a reversal on a technical ground or the waste of the judicial resource if it gets reversed on a technical ground and I hear it on summary judgment

on exactly the same information, I'm not going to do it. If you stand, we'll go through that process and we'll find out whether you have anything else to say.

MR. GUNN: For clarification sake, Your Honor, I would understand the motion, to deny, would be dismissed with prejudice and without leave to amend, obviously.

THE COURT: Say it again.

MR. GUNN: Am I correct to understand that your granting their motion would be with prejudice and there would be no leave to amend?

THE COURT: Sure.

MR. GUNN: Then I would ask the Court for the benefit of a recess for 10 minutes to confer with my co-counsel.

THE COURT: Sure.

MR. GUNN: Thank you, Your Honor.

[17] (Recess taken.)

THE COURT: Where are we?

MR. GUNN: Your Honor, thank you for the break .

I've been unable to confer with my client, Your Honor, due to the distance, to ask for authority given the nature of the case and the magnitude of the decision. It's not one that I can make without client approval.

For that reason, before I'd ask the Court for its ruling, I did just make a question to defense counsel, which he would like a moment to consider, and depending on his decision, then I'd ask the Court for its ruling, understanding that the plaintiffs are forced to stand on the position —

THE COURT: What's going to happen — and it may have been the very question you asked him — I was going to ask him to name his poison. You can have it either way; I don't care.

MR. ZAREFSKY: I'm sorry, Your Honor, I didn't hear you.

THE COURT: I said, assuming that we got to where we are, which I rather did assume we would, I was just going to ask you to name your poison.

This is the situation as I understand it to be today. This was originally a 12(b)6 motion. It arguably could have been decided on the face of the pleadings, but I [18] didn't think so because the ability to get a fair trial was a fact question in the first instance, and one that I would not have concluded just based on things that I could take judicial notice of or on the basis of plaintiff's allegations, so it needed to be fleshed out some.

For the reason I said I was going to treat it as a summary judgment motion. I would allow you to give me information that would suggest that you were right on the merits of the question of whether your client could have had a fair trial. I got additional information, I then inquired of the government myself to see if the government would negate the inferences that I was drawing from the papers that I had from them, and they said no.

The plaintiffs are saying that they had made a record — and I

don't doubt it — that they objected to my treating this 12(b)6 motion as a summary judgment motion, and that — I'm not sure they have a right to do that — what they're saying — and I'm not ruling one way or the other on it — if they say, I can't do it, then I'm limited to the 12(b)6 motion.

What I've just said to that is, in the first place I doubt that it's right, but that's just a matter of rules, and they've been looking at them, so they should be right.

MR. ZAREFSKY: I disagree with them on that.

[19] THE COURT: I would expect them actually to be wrong.

The whole purpose of the 12(b)6 summary judgment thing is so that you don't have seriatim summary judgments. It is a mechanism for trying those simple facts, such as the issue of whether a promissory note was actually signed.

Those kinds of issues you can treat up front on summary judgment, because if limited fact issues are not actually going to be in dispute, there's no point in having the whole discovery before doing that. That's my understanding of the purpose of 12(b)6; that's why I did it that way.

I have now concluded that based on all of the information that I believe could be made available, because I gave opportunity to make available from both sides, I don't believe — and I don't think the record would reflect — that the plaintiffs said they're not availing themselves of the opportunity to combat what you put in.

Appendix F

That's where we stand.

I can rule definitively on your motion today, they can then argue on appeal that I didn't have the right to treat this 12(b)6 motion as a summary judgment motion.

Or I can do it, arguably, the safe way. There is nothing in the rules that says I can't entertain 10 summary judgment motions if I want to, so I could just deny [20] this motion, allow you to file the same words in fact as a summary judgment motion, expedite the hearing date, see if they have anything to offer on that issue.

It would be a partial summary judgment motion, but it's a summary judgment on a particular issue. The issue is case dispositive. If you file it as a summary judgment motion and they have nothing to combat it with, I'm going to grant it. If I grant it, now you don't have this issue on appeal because there's nothing to talk about.

I don't care.

There aren't going to be any new facts on this issue, I don't believe. I've already said if I'm driven to do it that way and the plaintiff doesn't show me on the record that they clearly said that they hadn't had and weren't availing themselves of the opportunity to respond to this issue in advance of this hearing, that if they waste my time that way, that I'm going to go — I haven't used this expression; I think I won't, I'll choose another one — the Court will not be grateful, and it will look at what sorts of punishments are appropriate in the circumstance of wasting the Court's time.

I don't think that the plaintiffs have made a record that they

were consciously not responding to this issue at this time. If they haven't and I make you do it by summary judgment and they put in nothing new or they put in [21] things — well, two things.

If they put in nothing new, even if they've made a record, the Court will not be grateful. If they've made a record and they put in nothing substantively new, the Court will still not be grateful; what should it be.

This is a waste of your money.

As I sit here, I pretty much know what the penalty is going to be. You'll do it for free and they'll do it for twice as much. I don't know what other penalties I might use, but I know I'd use that one, because if they have nothing to offer, putting you to the burden and me to the burden of deciding this very same issue in a different format, I believe would at least raise the question of sanctions very seriously.

You have your choice. I'll just rule today in your favor; do you want me to?

MR. ZAREFSKY: That is my desire, Your Honor.

I believe that the record is quite clear that they had sufficient notice for quite a long time of the Court's intention, that they availed themselves of the opportunity to place evidence before the Court.

There's a big, thick declaration. We have many problems with it, but they did submit it. They took a substantial amount of time to do so. We originally filed this motion nearly a year ago, Your Honor.

[22] THE COURT: It's easy enough.

I said when you talked to him — I withdraw my apology; I apologize to you but not to the plaintiffs — I really had reservations about having spent either of your client's money to have you here to hear me announce a ruling that couldn't possibly have changed.

There wasn't going to be anything you could add to your papers, and I don't like to spend people's money, client money, to bring lawyers down to hear me talk about a ruling.

It turns out the plaintiffs thought there was something else to say, which has now taken some more time, but if you're happy, I'm happy. The motion is granted.

MR. ZAREFSKY: Thank you, Your Honor.

THE COURT: We'll be in recess.

MR. ZAREFSKY: Your Honor, do you wish me to submit an order of any sort?

THE COURT: I don't see why. You have a record, somebody will probably buy it. The word, I think, granted, speaks for itself.

The truth is, the only reason you'd submit an order to see if you could juice it up a little bit, and I wouldn't sign it. The record says what I want it to.

MR. ZAREFSKY: Very well; thank you, Your Honor.

Appendix F

CERTIFICATE

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPTION, REPORTED TO THE BEST OF MY ABILITIES, OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

s/ Terry Kramer
TERRY KRAMER
CERTIFIED VERBATIM REPORTER

1/14/94
DATE

APPENDIX G — EXCERPTS FROM DECLARATION OF THE DEMOCRATIC AND POPULAR REPUBLIC OF ALGERIA ("ALGERIAN ACCORDS")

[POINT IV - Paragraphs 12 and 14]

* * *

Point IV: Return of the Assets of the Family of the Former Shah

12. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above the United States will freeze, and prohibit any transfer of, property and assets in the United States within the control of the estate of the former Shah or of any close relative of the former Shah served as a defendant in U.S. litigation brought by Iran to recover such property and assets as belonging to Iran. As to any such defendant, including the estate of the former Shah, the freeze order will remain in effect until such litigation is finally terminated. Violation of the freeze order shall be subject to the civil and criminal penalties prescribed by U.S. law.

* * *

14. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will make known, to all appropriate U.S. courts, that in any litigation of the kind described in Paragraph 12 above the claims of Iran should not be considered legally barred either by sovereign immunity principles or by the act of state doctrine and that Iranian decrees and judgments relating to such assets should be enforced by such courts in accordance with United States law.

* * *

APPENDIX H — EXECUTIVE ORDER NO. 12284

Jan. 19, 1981, 46 F.R. 7929

* * *

1-101. For the purpose of protecting the rights of litigants in courts within the United States, all property and assets located in the United States within the control of the estate of Mohammad Reza Pahlavi, the former Shah of Iran, or any close relative of the former Shah served as a defendant in litigation in such courts brought by Iran seeking the return of property alleged to belong to Iran, is hereby blocked as to each such estate or person until all such litigation against such estate or person is finally terminated.

* * *

1-104. The Attorney General of the United States having advised the President of his opinion that no claim on behalf of the Government of Iran for recovery of property of the kind described in Section 1-101 of this Order should be considered legally barred either by sovereign immunity principles or by the act of state doctrine, the Attorney General is authorized and directed to prepare, and upon the request of counsel representing the Government of Iran to present to the appropriate court or courts within the United States, suggestions of interest reflecting that such is the position of the United States, and that it is also the position of the United States that Iranian decrees and judgments relating to the assets of the former Shah and the persons described in Section 1-101 should be enforced by such courts in accordance with United States law.

* * *

APPENDIX I — UNITED STATES CONSTITUTION
ARTICLE VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a qualification to any Office or public Trust under the United States.

Supreme Court, U.S.
FILED
OCT 16 1995
CLERK

No. 95-513

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1995

BANK MELLI IRAN; BANK MELLAT,
Petitioners,

vs.

SHAMS PAHLAVI, aka H.I.H. PRINCESS SHAMS PAHLAVI,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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No. 95-513

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1995

BANK MELLI IRAN; BANK MELLAT,
Petitioners,

vs.

SHAMS PAHLAVI, aka H.I.H. PRINCESS SHAMS PAHLAVI,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

Petitioners urge that the United States Government agreed with the Islamic Republic of Iran to eliminate due process in United States courts. Had the court of appeals so held, this case clearly *would* call for certiorari. Instead, the court of appeals ruled consistently with long-established law. It held that a foreign judgment will not be recognized and enforced if not procured in accordance with due process. This decision presents no grounds for certiorari, and the Petition should be denied.

ADDITIONAL STATUTES INVOLVED

This case also involves the Uniform Foreign Money-Judgments Recognition Act, enacted in California as CAL.CIV.PROC.CODE §§ 1713-1713.8. Section 1713.4 of that statute is reproduced in Respondent's Appendix A.

COUNTERSTATEMENT OF THE CASE

Certain matters have been omitted or not fully stated in the Petition; this counterstatement will explicate them.

I.

The Iranian Hostage Crisis And The Algerian Accords[1]

Petitioners rest their plea primarily on the Algerian Accords, the executive agreements which ended the Iranian hostage crisis of 1979-81. *See Declarations of the Government of the Democratic and Popular Republic of Algeria, reprinted in* DEPT. ST. BULL., Jan. 19, 1981; *see generally Dames & Moore v. Regan*, 453 U.S. 654, 101 S.Ct. 2972, 69 L.Ed.2d 918 (1981). The crisis began on November 4, 1979, after Shah Mohammed Reza Pahlavi entered a New York hospital for cancer treatment. Iranians seized the American Embassy in Tehran, and for 444 days held 52 Americans hostage. International condemnation, a personal

---

[1] Much of the history of the Iranian revolution and the takeover of the American embassy in Tehran is common knowledge. The details are set forth in hearings conducted by Congress after the hostages' release. *Iran's Seizure of the United States Embassy: Hearings before the House Comm. on For. Affairs*, 97th Cong., 1st Sess. (February 17, 19, 25 and March 11, 1981) *("House Hostage Hearings"); The Iran Agreements: Hearings before the Senate Comm. on For. Relations*, 97th Cong., 1st Sess. (February 17, 18 and March 4, 1981) *("Senate Hostage Hearings")*. The hostage crisis and the negotiations also are detailed in W. CHRISTOPHER *et al.*, AMERICAN HOSTAGES IN IRAN: THE CONDUCT OF A CRISIS (1985).

appeal from the Pope, a United Nations Security Council Resolution, and an order by a unanimous International Court of Justice all failed to produce the hostages' release. *See generally Senate Hostage Hearings* at 5-24.

In January 1981, the Iranians released the hostages, following intense negotiations between Iran and the United States, with Algeria acting as an intermediary. The Algerian Accords contained two primary agreements, the Basic Declaration and the Claims Settlement Declaration. Among other points, the Basic Declaration addressed the Iranians' demand that the Shah's wealth be returned. On this point, the United States committed that in suits brought in American courts urging that the Shah or close members of his family had wrongfully taken assets from Iran, the United States would make known its view that Iranian judgments and decrees relating to such assets should be enforced in accordance with United States law. (Petition, App. G.) Upon the signing of the Accords the day before he left office, President Carter issued various implementing executive orders, and President Reagan subsequently reaffirmed the United States' commitment.

II.

Iran In The 1980's — The Reign Of Terror

Following the hostages' release, Iranian society continued to suffer the throes of the revolution. As a result, State Department travel advisories throughout the 1980's warned against travel to Iran, citing the enmity between the Government of Iran and individuals associated with the United States. During that time, Iran continued to deny basic human rights, routinely torture prisoners, and summarily execute thousands of people opposed to the Khomeini regime. Iranian tribunals were not impartial, counsel were discouraged from representing clients associated with the Shah, and trials were unfair.

In 1982, for example, the State Department reported that in Iran "Constitutional guarantees of human rights are ignored in practice," that torture is "perpetrated by the revolutionary Government," and that "most trials in Iran are now neither fair nor public." *Country Reports on Human Rights Practices for 1982: Report Submitted to the Sen. For. Rel. Comm. and House For. Affairs Comm. By the Department of State* (1983) at 1137-1141 *("State Dept. Rept.")*. In 1983 the State Department referred to a likely figure of 1,000 summary executions during the previous year and rampant stories of torture in Iranian prisons. Under the heading "Denial of Fair Public Trial," it stated that "no trial by a revolutionary court can be called fair or public." *State Dept. Rept. for 1983* at 1256-1260. The 1985 State Department publication reported the following finding:

> Although the [Iranian] Constitution does guarantee many basic human rights, including rights related to due process (e.g., the right to be informed in writing of charges immediately after arrest, the right to legal counsel, the right to trial by jury in political cases), *the revolutionary court system ignores these provisions in practice. . . .*

State Dept. Rept. for 1985 at 1237 (emphasis added).

Throughout the 1980's, and continuing through today, the United States also has refused to restore diplomatic relations which it severed during the hostage crisis.

III.

The Danger To Those Associated With The Shah

Equally important, members of the former royal family, or those who had been associated with them, remained at risk throughout the world. Recognizing the personal danger to the royal family, the United States had refused the Iranian demand, made during the hostage crisis, to return

the Shah to Iran. *House Hostage Hearings* 155 (February 19, 1981) (Statement of Hon. Warren Christopher). Earlier an attempt had been made on the life of the Shah's other sister. N.Y. TIMES, Dec. 8, 1979 at 4, col. 4. Since then at least one member of the former royal family has been assassinated on the streets of Paris. *Id.* at 1, cols. 3, 4. Then, in 1991, Shahpur Bakhtiar, the last prime minister under the Shah, was likewise assassinated, an act which the State Department called "[t]he outstanding example of Iranian state terrorism in 1991." United States Department of State, *Patterns of Global Terrorism: 1991* 30 (April 1992).

In 1992, when this action was filed, the State Department continued to officially designate Iran as a country that fomented terrorism, *ibid.*, thereby posing great danger to those associated with the former Shah.

IV.

The Within Action — An Attempt To Recover On Stale Judgments Rendered Against The Shah's Sister During The Ongoing Revolution

During this period of genuine terror, Petitioners — two Iranian banks — sued Shams Pahlavi in Iran. Pahlavi is the elder sister of the late Shah, and currently is an American citizen. The banks did not assert that Pahlavi held "property and assets in the United States . . . belonging to Iran," the reach of the Algerian Accords' Basic Declaration. (Petition, App. G.) Litigation over Pahlavi's assets was the subject of a separate lawsuit brought by the Islamic Republic of Iran, which was dismissed. *Islamic Republic of Iran v. Pahlavi*, WEC 69489 (Cal.Superior Ct.), *judgment of dismissal aff'd*, 2d Civil No. B072484 (Cal.Ct.App.), *cert. denied*, ___ U.S. ___, 130 L.Ed.2d 420, 115 S.Ct. 513 (1994). Rather, the banks sought to recover on promissory notes Pahlavi had signed in pre-revolutionary Iran (and which had

been secured by property thereafter confiscated during the revolution). Serving Pahlavi only by publication in Iranian newspapers, the banks procured two judgments in 1982 and an additional one in 1986, totalling in excess of $32 million.

Six years after the last of these judgments (and at least two years past the statute of limitations, CAL.CIV.PROC.CODE § 343), the banks sued in the district court, seeking enforcement of these Iranian judgments under American law. The district court converted Pahlavi's motion, made under FED.R.CIV.P. 12(b)(6), to a motion for summary judgment, and gave the banks time to submit materials in opposition, which they did. The United States also submitted a statement, both referring to the official State Department publications, which had described the absence of due process in Iran, and an affidavit from a State Department official detailing the lack of due process in Iranian courts. The banks made no objection to the materials submitted by the United States.

The district court concluded that Pahlavi had carried her burden, that the banks had not shown a genuine issue of material fact, and that the Iranian judgments could not be recognized because they did not comport with standards of due process. The district court dismissed the action, and the Ninth Circuit affirmed.

With these matters in mind, it is clear that the writ should not issue.

SUMMARY OF ARGUMENT

This case presents nothing startling. Each court considering the Accords' provisions about the Shah has concluded that normal rules of litigation apply. In upholding Pahlavi's right to due process, the court of appeals here said the same thing with respect to the most fundamental of rights. The summary judgment procedure also was routine, affording

the banks every opportunity to demonstrate a triable issue of fact, but creating no issue for this Court to resolve.

REASONS FOR DENYING THE WRIT

I.

THE DECISION BELOW RAISES NO ISSUE FOR REVIEW CONCERNING THE ALGERIAN ACCORDS

In holding that "attempts to enforce judgments under the Algerian Accords are not exempt from due process defenses" (Petition, App. A at 12a), the court of appeals acted consistently with every other court which has construed these provisions of the Accords. Each court has held that members of the Shah's family do not lose their rights by virtue of the Accords. *Islamic Republic of Iran v. Pahlavi*, 160 Cal.App.3d 620, 206 Cal.Rptr. 752 (1984) (Accords do not create special rules in satisfying service of process requirements); *Islamic Republic of Iran v. (Mohammed Reza and Farah Diba) Pahlavi*, 62 N.Y.2d 474, 478 N.Y.S.2d 597, 467 N.E.2d 245 (1984), *cert. denied*, 469 U.S. 1108, 83 L.Ed.2d 778, 105 S.Ct. 783 (1985); (Accords do not strip the Shah's family of non-enumerated defense of *forum non conveniens*); *Islamic Republic of Iran v. (Ashraf) Pahlavi*, 473 N.Y.S.2d 801 (1984), *aff'd mem.*, 486 N.Y.S.2d 939, 476 N.E.2d 338 (1985) (same). In holding that the Accords do not divest Pahlavi of her due process rights, the opinion below presents no novel issue or extraordinary interpretation for review by this Court.

Furthermore, the decision below was indisputably correct. The Accords obligate the United States, in an appropriate case, to state that Iranian decrees and judgments are to be enforced "in accordance with United States law." (Petition, App. G.) To assert that by such language the Accords eviscerate due process, not protect it, stands the language of

the Accords on its head. It violates the requirement that "[t]he clear import of treaty language controls unless 'application of the words of the treaty according to their obvious meaning effects a result inconsistent with the intent or expectations of its signatories.' [citation omitted.]" *Sumitomo Shoji America, Inc. v. Avagliano,* 457 U.S. 176, 180, 72 L.Ed.2d 765, 102 S.Ct. 2374 (1982).

In the United States, enforcement of foreign judgments traditionally depended on whether those judgments comported with civilized notions of fairness. If so, such judgments were recognized under the comity of nations, and entitled to be enforced in American courts. *Hilton v. Guyot,* 159 U.S. 113, 16 S.Ct. 139, 40 L.Ed. 95 (1895). In many states, including California where this action was brought, the common law has been codified in the Uniform Foreign Money-Judgments Recognition Act. CAL.CIV.PROC.CODE § 1713 *et seq.* Section 1713.4 expressly provides that foreign money judgments shall not be recognized if they were procured under a system that does not comport with due process of law.

This was the state of the law at the time that the Accords were negotiated, and it is inconceivable that the words "in accordance with United States law" could be taken to eliminate the most basic tenet of American law, the requirement of due process. Rather, the negotiating history corroborates the plain meaning of the Accords. Contrary to the representations made by the banks here — that the United States "undertook the duty to return assets to the Islamic Republic of Iran" (Petition at 9) — American negotiator Warren Christopher testified before Congress that such assets could be returned only if a court, having first guaranteed the defendant full due process of law, then ordered them returned:

> Throughout the crisis, Iran insisted on a return of the wealth of the former Shah and his family. . . .

> During the negotiations, the U.S. never deviated from the position that under our system of government, the transfer of private property from one party to another can be ordered only pursuant to procedures which afford due process of law. Late in the negotiations Iran finally accepted that principle, and it is reflected in the Declarations. As a result, the Shah's estate and his close relatives will have full protection of due process of law with respect to claims against their properties by Iran.
>
> Under the Declarations (Paras. 12-15) the U.S. has agreed to take certain actions in connection with any lawsuits brought by Iran regarding the Shah's wealth, but these commitments are carefully limited.
>
> . . . .
>
> In sum, the United States refused to return the Shah to Iran prior to his death, and it has also steadfastly refused to confiscate and transfer his U.S. assets, insisting instead on the maintenance of the Constitutional requirements of due process of law.

House Hostage Hearings, 153-55.

This history confirms that the words "in accordance with United States law" have the obvious meaning, that the provisions of United States law govern the course of any lawsuit. In accord with this history, when the United States stated its position in the district court here it made no assertion that the Accords deprived Pahlavi of her due process rights. To the contrary, it presented evidence that due process was lacking in Iran at the time when these judgments were obtained.

In the Petition, however, the banks assert that they would be entitled to enforce their Iranian judgments even without the Algerian Accords, and that therefore "Paragraph 14

requires that Iranian judgments receive special treatment as compared to the ordinary rule of United States law". (Petition at 9.) This contention is wrong.

Traditionally, an unrecognized government, such as the Islamic Republic of Iran, had no right to proceed in American courts. *Guaranty Trust Co. v. United States*, 304 U.S. 126, 137, 58 S.Ct. 785, 82 L.Ed. 1224 (1938); *cf. Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 410, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964). In the face of this traditional understanding of the law, the Algerian Accords gave an assurance of access to the courts when access might not have been granted otherwise. In fact, subsequent cases have identified the Algerian Accords as one basis for saying that the Islamic Republic of Iran may appear in United States courts even though the United States still does not recognize the government. *National Petrochemical Company of Iran v. M/T Stolt Sheaf*, 860 F.2d 551, 555 (2d Cir. 1988), *cert. denied*, 489 U.S. 1081, 103 L.Ed.2d 840, 109 S.Ct. 1535 (1989). Thus, the only "special treatment" the Accords gave was the right to enter American courtrooms when otherwise some courts might have interpreted existing precedent as barring such suits.

The Accords therefore allowed the banks to bring suit. They did not gut due process. It would be remarkable if they did. It was pedestrian that they did not.

II.

THE DECISION PRESENTS NO IMPORTANT ISSUE WITH RESPECT TO SUMMARY JUDGMENT PROCEEDINGS

Likewise, although the banks assert that the court of appeals erred in upholding the summary judgment, they identify nothing unusual about summary judgment law which merits this Court's review. The court of appeals did

not create any new rules relating to summary judgment or issue an opinion at conflict with summary judgment opinions of other circuits or this Court. At most the banks have urged that the court of appeals misapplied the law, but an isolated misapplication of the law is not a basis for certiorari.

Moreover, the banks ground their argument on language from *Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 91 L.Ed.2d 265, 106 S.Ct. 2548 (1986) which they take out of context. The court of appeals here stated that the material submitted by the banks was in the form of an information-and-belief affidavit from counsel, and thus entitled to no weight in opposition to the summary judgment motion. (Petition, App. A., 15a-16a). In the Petition, the banks quote from *Celotex* that "We do not mean that the nonmoving party must produce evidence in a form that would be admissible at trial in order to avoid summary judgment." (Petition at 11). That sentence, however, referred to the fact that FED.R.CIV.P. 56 allows for a nonmoving party to provide a variety of information in opposition to a motion — affidavits, depositions, answers to interrogatories and the like — many of which, such as affidavits themselves, would not be admissible at trial. *Celotex, supra*, 477 U.S. at 324. The quoted material from *Celotex* does not provide that affidavits may be made on the basis of information and belief.

It could not do so, because Rule 56(e) itself says just the opposite:

> Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

The court of appeals properly applied Rule 56. The court of appeals' decision raises no novel issue of summary judgment law which justifies the granting of certiorari.

III.

THE RECORD PRESENTS INDEPENDENT GROUNDS FOR SUSTAINING THE DECISION BELOW

The court of appeals' opinion carries with it independent reasons for affirming. As the court of appeals noted, the banks failed to sustain their burden. Pahlavi showed that she had not received notice of the Iranian suits, that she could not safely return to Iran, that witnesses and counsel were intimidated, and that she could not obtain a trial that in any sense could be considered fair. (Petition, App. A at 16a). The banks' response, even if admissible, did not counter this showing. Nor was this just a question of "*United States* notions of due process," (Petition at i (emphasis added)), though due process in fact was required. Instead, the matters concerned core ingredients of a civilized judicial system. (Petition, App. A at 17a). The record required affirmance in any event, and certiorari would not change that.

CONCLUSION

The banks took the extraordinary position that they could enforce foreign judgments which did not comport with any sense of due process. The court of appeals instead held them to the standard requirement of compliance with due process. The decision presents no grounds for review, and the Petition should be denied.

Dated: October 16, 1995

Respectfully submitted,

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APPENDIX

APPENDIX

RESPONDENT'S APPENDIX A

CAL. CIV. PROC. CODE § 1713.4

§ 1713.4 Nonconclusive foreign judgment; nonrecognition

(a) A foreign judgment is not conclusive if

(1) The judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) The foreign court did not have personal jurisdiction over the defendant; or

(3) The foreign court did not have jurisdiction over the subject matter.

(b) A foreign judgment need not be recognized if

(1) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;

(2) The judgment was obtained by extrinsic fraud;

(3) The cause of action or defense on which the judgment is based is repugnant to the public policy of this state;

(4) The judgment conflicts with another final and conclusive judgment;

(5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or

(6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

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REASONS FOR DISREGARDING RESPONDENT'S OPPOSITION AND GRANTING A WRIT OF CERTIORARI

The turmoil which preceded the Algerian Accords is over. The responsibilities assumed, and obligations accepted, by the United States in adopting the Algerian Accords continue. Unless this Court confronts the seminal issue and enforces the Algerian Accords, the Banks will be irreparably prejudiced and Respondent's political propaganda (Opposition at 2-5) and misplaced reliance on politicians' rhetoric (Opposition at 8-9) will forever justify the dismissal of the Banks' Complaint in the minds of the lower court jurists that have ruled on this case to date.

I.

THE SIGNIFICANCE OF THE ISSUE PRESENTED FOR REVIEW AND THE IMPLICATIONS OF THE LOWER COURTS' RULINGS WARRANT GRANTING THE PETITION FOR WRIT OF CERTIORARI.

Uniformity of decision is not the issue. *Multiple* wrongs do not make a right. Prior omissions to recognize and to give effect to the intent of the parties to the Algerian Accords, and the implications thereof in related litigation, do not justify a decision by this Court to deny review.

The provisions of the Algerian Accords at issue in this case have general application. Similar cases will be filed in the future. The questions of law involved here can also apply to future enforcement of treaties and executive agreements.

The Algerian Accords, as an executive agreement, command enforcement of Iranian judgments. (Petition at Appendix G.) The Algerian Accords' enforcement command transcends

generally applicable law on enforcement of foreign judgments. This case is not the ordinary judgment enforcement action that Shams portrays. (Opposition at 10.) Shams' reliance on *Hilton v. Guyot*, 159 U.S. 113 (1895), is misplaced. *Hilton* involved no executive agreement and no supreme federal command for enforcement of foreign judgments.

This case presents important questions of law pursuant to Supreme Court Rule 10.1(c).

II.

THE TEXT OF THE ALGERIAN ACCORDS CONTROLS. THE ALGERIAN ACCORDS COMMAND ENFORCEMENT WITHOUT SECOND GUESSING ON DUE PROCESS GROUNDS.

Shams cannot dispute or refute the supremacy of federal law, as set forth in the Algerian Accords. United States Constitution Article VI. (Petition at Appendix I.) *Sumitomo Shoji America, Inc. v. Avagliano*, 457 U.S. 176 (1982).

The lower courts failed to heed the clear enforcement command in the Algerian Accords. Under *Sumitomo*, 457 U.S. at 180, the lower courts were required to enforce the Algerian Accords according to their terms. The Algerian Accords have no ambiguity. Nowhere do the Algerian Accords discuss due process or fair trial inquiries in connection with judgment enforcement actions.

It is true that the Algerian Accords enforcement command calls for enforcement "in accordance with U.S. law." However, as interpreted and applied by the lower courts, the command violated the intent underlying the Algerian Accords. The Algerian Accords seek to return the Shah's and his close relatives' assets to

the Islamic Republic of Iran. By disposing of the Banks' case on due process grounds, the lower courts overlooked this agreement to return assets. In so doing, the lower courts flouted the intent of the Algerian Accords.

Collateral inquiries on purported due process and fair trial issues have no role in this case. By raising and relying upon such collateral matters, the lower courts erred.

III.

THE ALGERIAN ACCORDS ARE NOT THE BANKS' SOLE SOURCE OF ACCESS TO UNITED STATES COURTS. THE ALGERIAN ACCORDS PRESUME ACCESS EXISTS. THE ACCORDS COMMAND ENFORCEMENT OF JUDGMENTS.

Shams misinterprets *National Petrochemical Company of Iran v. M/T Stolt Sheaf*, 860 F.2d 551 (2d Cir. 1988), *cert. denied*, 489 U.S. 1081 (1989) in stating that the Algerian Accords merely provide access to United States Courts which would otherwise be unavailable. (Opposition at 9-10.)

The Islamic Republic of Iran and its nationalized entities, like the Banks, could properly proceed in United States courts before the Algerian Accords. The United States Government has so confirmed.[1]

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1. The Brief filed on behalf of the United States Government as *Amicus Curiae* in *National Petrochemical* clearly indicates the Executive Branch of the United States Government recognized the then government of Iran on February 16, 1979, prior to adoption of the Algerian Accords. The United States Government's firm statement on the issue, which is in line with the *National Petrochemical* court's ultimate decision on the issue, refutes Shams' bald assertion regarding the Accords.

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The Algerian Accords do not themselves grant access to United States Courts. In Point IV, Paragraphs 12 and 14, access is presumed. The Algerian Accords go beyond discussing court access to state an independent command for enforcement of

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(Cont'd)

The United States Government's *Amicus Curiae* brief stated in pertinent part, at page 9:

> [footnote 10:]
>
> *See* J. Hervey, *The Legal Effects of Recognition in International Law* 3 (1928) ("courts are unanimously agreed that recognition by the political departments of the government is binding upon the courts. They cannot enter into an independent examination in order to determine for themselves which is the lawfully instituted government in a designated territory . . . .")
>
> • • •
>
> [full text:]
>
> *II. The Government of Iran and its Instrumentalities are Entitled to Access to U.S. Courts*
>
> The Executive Branch made a formal statement of recognition and instituted diplomatic relations with the first revolutionary government of Iran, that of Mehdi Bazargan, on February 16, 1979. On that date, State Department press spokesman Hodding Carter III stated as follows: [footnote 11 omitted]
>
> > Our ambassador has relayed to the Government in Iran our intention to maintain diplomatic relations with that Government. This is the formal declaration that our relations do continue . . . . It [the Ambassador's statement] recognizes the government which is in power in Iran, which is headed by Prime Minister Bazargan . . . . We recognize that Government. They will have to say what the status of the Shah is.

Iranian decrees and judgments. Shams' arguments and authority to the contrary are misplaced and deserve no weight.

IV.

THE BANKS' SHOWING SATISFIED THE MISPLACED DUE PROCESS INQUIRY AND THE *CELOTEX* STANDARD.

Shams attempts to read more into the Banks' citation from *Celotex Corp. v. Catrett*, 477 U.S. 321, 324 (1986) than is actually there. (Petition at 11; Opposition at 10-11.) The citation is a binding Supreme Court interpretation of Federal Rule of Civil Procedure 56 on summary judgment. The *Celotex* Court clearly ruled that submissions in opposition to summary judgment need not be evidence admissible at trial to be sufficient to preclude summary judgment. The Banks' information and belief submission satisfies the *Celotex* standard. A genuine issue of material fact exists to preclude summary judgment. The lower courts' rulings to the contrary ignore the precedent of *Celotex*.

V.

THE LOWER COURTS DID NOT RULE ON ISSUES OTHER THAN THE DUE PROCESS/FAIR TRIAL ISSUE.

The courts below ruled solely based on what they perceived to be the inability to receive a fair trial in the Islamic Republic of Iran. The courts relied solely on generalized government reports which had no relation to the claims subject to the instant action. Contrary to Shams' mistaken contention that the Banks did not object to the reports (Opposition at 6), the Banks did object.[2] The

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2. The Banks filed with the trial court written objection to the government reports which Shams relied upon. The objection preceded the first

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generalized government reports proved nothing about the Iranian proceedings which underly the instant case, despite Shams' contentions. (Opposition at 12.)

VI.

THERE IS NO PRIOR DISPOSITIVE RULING BASED ON THE ALGERIAN ACCORDS.

The issue presented by this case has not been decided before.

Shams cites several cases for the mistaken proposition that the result in the instant case is compelled by prior decisions. None of the cases Shams cites involved use of due process analysis to derail a judgment enforcement action under the Algerian Accords.

The decisions in *Islamic Republic of Iran v. Pahlavi,* 62 N.Y. 2d 474, 478, N.Y.S. 2d 597, 467 N.E. 2d 245 (1984), *cert. denied,* 469 U.S. 1108 (1985); and *Islamic Republic of Iran v. Pahlavi,* 473 N.Y.S. 2d 801 (1984), *aff'd mem.,* 486 N.Y.S. 2d 939, 476 N.E. 2d 338 (1985), concerned application of the doctrine of *forum non conveniens.*

The decision in *Islamic Republic of Iran v. Pahlavi,* 160 Cal. App. 3d 620, 206 Cal.Rptr. 752 (1984) concerned California state law standards for service of process.

Discovery sanctions were the issue in *Islamic Republic of Iran v. Pahlavi,* WEC 69489 (Cal. Superior Ct.), *judgment of dismissal aff'd,* 3d Civil No. B072484 (Cal. Ct. App.), *cert. denied,* __ U.S. __, 130 L. Ed. 2d 420, 115 S. Ct. 513 (1994).

(Cont'd)
hearing before the trial court on March 29, 1993. *See* Opposition to Defendant's Motion to Dismiss Complaint; Memorandum of Points and Authorities in Support Thereof, dated March 10, 1993, at pages 2 and 10-13.

VII.

NO STATE LAW ISSUE CONTROLS THE OUTCOME OF THIS CASE.

Shams hints in the Opposition that the Banks' complaint was untimely. (Opposition at 6.) Shams is mistaken.

Shams also contends that the Uniform Foreign Money Judgments Recognition Act, codified in California as Code of Civil Procedure Sections 1713 *et seq.*, provides an independent basis for the lower courts' rulings. (Opposition at 8 and Appendix A.) This is also incorrect.

The instant action arises under the Algerian Accords, a federal executive agreement. As federal law, the Algerian Accords are supreme to state law. United States Constitution Article VI.

Shams contends that California Code of Civil Procedure Section 343 is the controlling limitation period. Assuming *arguendo* that a limitation period applies, it is California Code of Civil Procedure Section 337.5 which provides for a ten (10) year limitation period. The Algerian Accords provide no limitation period. The Banks' action is timely under Section 337.5.

CONCLUSION

For the foregoing reasons, and those stated in the Petition for Writ of Certiorari, the Petition should be granted.

Dated: October 25, 1995

Respectfully submitted,

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